RECENT JURISPRUDENCE ON LEGAL ETHICS*

INTRODUCTION

This Article is a survey of recent cases decided by the Supreme Court on legal ethics, with a special focus on those which applied the Code of Professional Responsibility and Accountability ("CPRA"). As such, the cases reviewed are limited to those which have been decided and made publicly available by the Court as of this Issue's publication. For greater focus and clarity, cases which involve judicial ethics have been excluded.

The CPRA supersedes the Code of Professional Responsibility,[1] and reflects "significant developments in [Philippine] laws and socio-economic life as a people, as well as the rapid technological advancements around the world."[2] It follows a values-based framework, with provisions organized under six canons that govern the core professional values of lawyering.[3] These canons are Independence (Canon I), Propriety (Canon II), Fidelity (Canon III), Competence and Diligence (Canon IV), Equality (Canon V), and Accountability (Canon VI).

Significant developments include the standardization and codification of the practice of law, the lawyer-client relationship, the responsible use of social media, and several other forms of conduct. Although most of the developments have yet to be tested, this work endeavors to offer some insights on how the Court has begun to use the CPRA in resolving disputes.

Part I provides an overview of the new social media regime found in the CPRA and tries to understand the Court's approach to regulating the online activities of its officers. Part II highlights the Court's continued use of

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This Article is a part of a series published by the JOURNAL, providing updates on jurisprudence across the eight identified fields of law. The other Articles focus on political law, labor law, civil law, taxation, criminal law, mercantile law, and remedial law.

[1] "CODE OF PROF'L RESPONSIBILITY & ACCOUNTABILITY [hereinafter "CPRA"], gen. provisions, § 2.

[2] Pmbl. ¶ 4. This pertains to a preambular clause in the Resolution issued by the Court in promulgating the CPRA, and not to the preamble to the CPRA itself.

[3] *Supreme Court Officially Launches the Code of Professional Responsibility and Accountability,* SUPREME COURT OF THE PHILS. WEBSITE, Apr. 18, 2023, *available at* https://sc.judiciary.gov.ph/supreme-court-officially-launchesthe-code-of-professional-responsibility-and-accountability/.

precedents, even as it applies CPRA provisions. It notes that, at least for the cases reviewed, the Court endeavors to integrate its prior rulings involving provisions which have been retained and reorganized in the CPRA.

I. THE SOCIAL MEDIA REGIME UNDER CPRA

The CPRA introduced key regulations on how lawyers should use social media, which were placed under the canon on Propriety.[4] Consisting of nine provisions, this regime set forth guidelines and standards on the responsible use of social media;[5] the character and effects of online posts;[6] the duty to avoid contributing to disinformation;[7] the prohibition against using social media accounts to violate laws and rules;[8] the duty to observe confidentiality through online posts[9] and activities;[10] the prohibition against using social media to influence officers in performing their official duties;[11] the distinction between general and specific legal advice;[12] and the duty to exercise prudence in avoiding conflicts of interest through social media.[13]

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[4] *See* CPRA, canon II, §§ 36–44.

[5] Canon II, § 36. "A lawyer shall have the duty to understand the benefits, risks, and ethical implications associated with the use of social media."

[6] Canon II, § 37. "A lawyer shall ensure that his or her online posts, whether made in a public or restricted privacy setting that still holds an audience, uphold the dignity of the legal profession and shield it from disrepute, as well as maintain respect for law."

[7] Canon II, § 38. "A lawyer shall not knowingly or maliciously post, share, upload or otherwise disseminate false or unverified statements, claims, or commit any other act of disinformation."

[8] Canon II, § 39. "A lawyer shall not create, maintain or operate accounts in social media to hide his or her identity for the purpose of circumventing the law or the provisions of the CPRA."

[9] Canon II, § 40. "A lawyer shall not reveal, directly or indirectly, in his or her online posts confidential information obtained from a client or in the course of, or emanating from, the representation, except when allowed by law or the CPRA."

[10] Canon II, § 41. "A lawyer, who uses a social media account to communicate with any other person in relation to client confidences and information, shall exert efforts to prevent the inadvertent or unauthorized disclosure or use of, or unauthorized access to, such account."

[11] Canon II, § 42. "A lawyer shall not communicate, whether directly or indirectly, with an officer of any court, tribunal, or other government agency through social media to influence the latter's performance of official duties."

[12] Canon II, § 43. "Pursuant to a lawyer's duty to society and the legal profession, a lawyer may provide general legal information, including in answer to questions asked, at any fora, through traditional or electronic means, in all forms or types of mass or social media.

A lawyer who gives legal advice on a specific set of facts as disclosed by a potential client in such fora or media dispenses Limited Legal Service and shall be bound by all the duties in the CPRA, in relation to such Limited Legal Service."

[13] Canon II, § 44. "A lawyer shall exercise prudence in making posts or comments in social media that could violate the provisions on conflict of interest under the CPRA."

This Part will review three decisions involving social media use. The first case was promulgated on the same day as the CPRA. Although it did not apply the new provisions, it did offer clues on the Court's approach moving forward. The second and third cases, meanwhile, fully applied the new CPRA provisions. They allowed the Court to demonstrate how it implements its new social media regime, and how seriously it considers the possible consequences of online affairs.

A. *In re Disturbing Social Media Posts of Lawyers/Law Professors*[14]

The first case in this series involves homophobic remarks and comments that were made by some lawyers and law professors in a Facebook thread. It began when one of the respondents made a Facebook post narrating how he successfully prosecuted a member of the LGBTQIA+ community, and how he was cussed out and called a bigot. He also observed that the judge—who was "somewhat effeminate"—came to his defense.[15]

The others joined in by commenting on the post. One of them inquired about the identity of the judge, and alluded to one who allegedly wore some makeup and tended to be strict and irascible ("*[a]ng taray pa*").[16] He went on to say that, as an internal joke among lawyers, judges who held office in the second floor of Taguig's Hall of Justice suffered from mental defects, while those who held office downstairs were non-heterosexuals ("*bakla*") and were corrupt.[17] Another one jumped in and insinuated that the convicted person might have desired the prosecutor, and was frustrated that they could not have relations with him ("*di ka mapapasakamay n'ya*").[18] Lastly, one of them recalled how the other had a client who looked lustfully at his attorney (*"malagkit ang tingin kay papa*").[19]

Four out of the five respondents apologized for their actions and tried to explain that they did not mean to discriminate against members of the LGBTQIA+ community. They supplemented these with assertions that they had friends, colleagues, and clients who identified as members of the community, and that they had track records of treating them fairly and equally.[20] The person who made the Facebook post also invoked his right to privacy by saying that his Facebook profile was locked, with its contents inaccessible to outsiders.

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[14] [Hereinafter "*In re Disturbing Social Media Posts*"], A.M. No. 21-05-20-SC, Aug. 16, 2023.

[15] *In re Disturbing Social Media Posts,* A.M. No. 21-05-20-SC, slip op. at 2.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*, slip op. at 3.

[20] *Id.*, slip op. at 3–6.

Meanwhile, one respondent did not apologize, and instead cited his clean record and his history of supporting members of the community.[21]

The Office of the Bar Confidant ("OBC"), after investigating the matter, recommended that the five respondents be admonished. It noted in its report that lawyers were bound to abide by "the highest degree of propriety and decorum."[22] It was also observed that they should avoid conduct which tended to degrade respect for the judiciary, and that they must refrain from speech that tended to ridicule marginalized sectors such as the LGBTQIA+ community. The OBC also considered their apologies and remorse.[23]

The Court, for its part, framed its decision along two key issues: (1) the availability of the lawyers' privacy right as a defense; and (2) the lawyers' respective violations of the Code of Professional Responsibility ("CPR"), if any.[24] Here, it is useful to note that the CPRA was not applied because it was yet become effective. The decision was promulgated on April 11, 2023, which was the same date as the CPRA's issuance. Still, there is considerable value in sifting through the Court's reasoning here, if only to draw insights from its justifications.

In resolving the privacy concern, the Court looked to its prior ruling in *Belo-Henares v. Guevarra.*[25] In that case, it was held that privacy as a defense for lawyers was quite limited in scope, at least in the context of Facebook. The extent to which it will be appreciated depends on how the lawyer used Facebook's privacy tools, i.e., if visibility was limited or access was restricted.[26] Limiting the visibility of the post to one's "friends," for instance, did not guarantee a successful privacy defense.[27] For this case, the Court determined that the allegation that steps were taken to create a reasonable expectation of privacy remained unproven.

The Court further found that even if one of the respondents "locked" his Facebook profile, his act would not give rise to such reasonable expectation. It was then reiterated and emphasized that "there can be no reasonable expectation of privacy as regards social media postings, regardless if the same are

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[21] Notably, he even had a client and a radio show guest—both of whom were not straight—attest to his non-discriminatory personality and behavior through affidavits. *In re Disturbing Social Media Posts,* slip op. at 5.

[22] *Id.*

[23] *Id.,* slip op. at 5–6.

[24] *Id.*

[25] [Hereinafter "*Belo-Henares"*], 801 Phil. 570 (2016).

[26] *In re Disturbing Social Media Posts,* slip op. at 6–7, *citing Belo-Henares*, 801 Phil. at 583–85.

[27] *Id.*, *citing Belo-Henares,* 801 Phil. at 585–86.

'locked,' precisely because the access restriction settings in social media platforms do not absolutely bar other users from obtaining access to the same."[28]

This reliance on *Belo-Henares* continued in the Court's determination of the lawyers' violations.[29] The Court held that the applicable CPR provision was Rule 7.03, which prohibited lawyers from behaving in ways which reflect negatively on their fitness to practice law, or which tend to discredit the legal profession.[30] The Court then reviewed sources of law which require lawyers to respect the LGBTQIA+ community, which included the freedom of expression, the principle of equality and non-discrimination, Article 19 of the Civil Code, the Safe Spaces Act, and indirectly, the Lawyer's Oath.[31] Hence, failing to respect the community would mean a violation of Rule 7.03.

The discussion then turned to the language used by the lawyers, with the Court noting that under Rule 8.01, the use of forceful and emphatic words must always fit the dignity of the legal profession.[32] This has been applied even to judges who used offensive language, such as derogatory words and homophobic slurs, against members of the community.[33] Also considered was Canon 11, under which lawyers were required to maintain respect towards courts.[34] Depending on the gravity of their actions, those who disrespect courts or judges may be administratively penalized with a warning, fine, suspension, or disbarment.[35]

The Court then demonstrated how the language used by each of the respondents violated the CPR. For every instance, the decision surfaced how their remarks were dripping with anti-LGBTQIA+ undertones and subtext,

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[28] *In re Disturbing Social Media Posts,* slip op. at 8, *citing Belo-Henares*, 801 Phil. at 585.

[29] *Id.*

[30] *Id.* "A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he whether in public or private life, behave in a scandalous manner to the discredit of the legal profession." CODE OF PROF'L RESPONSIBILITY (1988), canon 7, Rule 7.03. Note that this has since been repealed by the CPRA. CPRA, gen. provisions, § 2.

[31] *Id.*, slip op. at 9–13, *citing* Ang Ladlad LGBT Party v. COMELEC, 632 Phil. 32, 80–85 (2010); Cent. Bank Emp. Ass'n, Inc. v. Bangko Sentral ng Pilipinas, 487 Phil. 531, 588–90 (2004); Social Security System v. Ubaña, 767 Phil. 575, 591 (2015); Rep. Act No. 11313 (2019), § 2; RULES OF COURT, Rule 138, § 17.

[32] "A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper." *Id.,* slip op. at 14, *citing* CODE OF PROF'L RESPONSIBILITY (1988), canon 7, Rule 8.01.

[33] *Id.*, slip op. at 14–15, *citing* Dojillo v. Ching, 612 Phil. 47, 57–58 (2009); Espejon v. Loredo, A.M. No. MTJ-22-007, Mar. 9, 2022.

[34] "A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others." *Id.,* slip op. at 15, *citing* CODE OF PROF'L RESPONSIBILITY (1988), canon 11; Tiongco v. Aguilar, 310 Phil. 652, 659 (1995).

[35] *Id.*, slip op. at 15–16.

rendering them guilty of breaching Rule 7.03. Four of the respondents were reprimanded, each with a stern warning against repetition. The Court justified the reprimand by saying that a mere admonition would not have sufficed.[36]

Meanwhile, a fine of PHP 25,000 and a stern warning was imposed on the remaining respondent due to his additional remarks on the mental fitness of judges and his general insinuation that homosexual judges were just as bad as corrupt ones.[37] This was said to promote distrust in the courts and undermine the authority of and respect for members of the judiciary. The Court went further and highlighted how this respondent completely lacked remorse and even attempted to sidestep his wrongdoing. This was made worse by the fact that he was a law professor who shaped legal minds.[38] In further justifying the penalty, it was said that "social media has multiplied the adverse impact of the statements […] a countless times."[39]

This decision is a good indicator for how the Court planned to transition from the CPR to CPRA in regulating social media use, considering it was the last Facebook-related case to be decided under the old Code. First, the Court showed that it would robustly cite cases and apply precedents analogously. Much of the discussion here centered on the framework already laid out in *Belo-Henares,* which in turn, borrowed from the Facebook privacy pronouncements in *Vivares v. St. Theresa's College*.[40] Also drawing from *Belo-Henares,* the decision reiterated the use of Rule 7.03 as a source of liability for bad social media behavior. The Court would also not hesitate to retrofit past rulings so that they may suit its purposes in imposing penalties.[41]

Second, it appears that social media regulation will move forward with its broad, *Vivares*-based treatment of privacy. This approach has been criticized for its logical inconsistencies and its inadequacy to address the differences between privacy in physical spaces and in virtual ones.[42] The Court, in this case, extended its ruling in *Belo-Henares* to cover even "locked" Facebook profiles, since fixing restriction settings would not ensure that others could not access the content posted by the user.

However, it's quite important to read this pronouncement with caution. In both *Belo-Henares* and this current case, the Court's chief reason for setting

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[36] *In re Disturbing Social Media Posts,* slip op. at 16–18.

[37] *Id.*, slip op. at 18.

[38] *Id.*, slip op. at 19–20.

[39] *Id.*, slip op. at 20.

[40] *Belo-Henares,* 801 Phil. at 584–586, nn.64–68.

[41] *See In re Disturbing Social Media Posts,* slip op. at 19–20.

[42] Enrico Miguel Dizon, *Too Much Information: Re-Examining the Vivares v. St. Theresa's College Standard of Reasonable Expectation of Privacy in Social Media*, 96 PHIL. L.J. 318, 332–36 (2023).

aside the privacy defense was the failure to prove the steps taken to create a reasonable expectation of privacy.[43] The Court only proceeded to engage with privacy standards after making an *ad arguendo* assumption. While those who wish to challenge this approach may argue that it is drawn from *obiter dicta*, they must be mindful that the Court appears to treat this as *ratio* instead. Furthermore, the four considerations set out in *Belo-Henares* only pertained to when a Facebook post was set to the "Friends Only" setting.[44] It was this consequence-based approach[45] that was carried over to this case.

Third and last, the Court used Rule 7.03 as the bedrock of its social media regulation pre-CPRA. The duty to responsibly use social media thus stemmed from the duty to uphold the integrity and dignity of the legal profession. It will be interesting to see whether this undercurrent would be carried forward in succeeding social media cases, or if the Court would solely rely on its newly codified provisions instead.

B. *In re Atty. Lorenzo Gadon's Viral Video against Raissa Robles*[46]

The next case in this series pertains to the disbarment proceedings against Atty. Lorenzo Gadon. Notably, this was the first instance in which the Court applied its new social media regime under the CPRA. The controversy sprung from a viral video clip which portrayed Atty. Gadon uttering profanities directed towards Raissa Robles, a journalist. The Court's transcription and translation of the words uttered in the clip are reproduced below:

> *Hoy, Raissa Robles, puki ng ina mo, hindot ka. Putang ina mo. Ano'ng pinagsasabi mong hindi nagbayad si BBM ng taxes? May certification 'yan galing sa BIR. Puki ng ina mo! Hindot ka! Putang ina mo, Raissa Robles! Magpakantot ka sa aso! Puki ng ina mo! Hindot ka! Putang ina mo!*
>
> *[Hoy,* Raissa Robles, your mother's vulva, fuck you. Your mother is a whore. Why are you saying that BBM did not pay his taxes? There is a certification from the BIR (that he did so). Your mother's vulva! Fuck you! Your mother is a whore, Raissa Robles! Get yourself fucked by a dog! Your mother's vulva! Fuck [y]ou! Your mother is a whore!][47]

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[43] *Belo-Henares*, 801 Phil. at 585; *In re Disturbing Social Media Posts,* slip op. at 8.

[44] *Belo-Henares*, 801 Phil. at 585–86. The four factors are: "(1) Facebook 'allows the world to be more open and connected by giving its users the tools to interact and share in any conceivable way; (2) [a] good number of Facebook users 'befriend' other users who are total strangers; (3) [t]he sheer number of 'Friends' one user has, usually by the hundreds; and (4) [a] user's Facebook friend can 'share' the former's post, or 'tag' others who are not Facebook friends with the former, despite its being visible only to his or her own Facebook friends."

[45] Dizon, *supra* note 42, at 333–34.

[46] [Hereinafter "*In re Gadon's Viral Video*"], A.C. No. 13521, June 27, 2023.

[47] *Id.*, slip op. at 2.

The Court took note of the video, and through a resolution, placed Atty. Gadon under preventive suspension and asked him to show cause as to why he should not be disbarred. It was initially found that his words violated Rule 7.03 of the CPR and sufficed as *prima facie* evidence of gender-based online sexual harassment.[48] Other instances of his rude public behavior were also noted, such as indecently antagonizing former Chief Justice Maria Lourdes Sereno and her supporters; implying in a radio interview that former President Benigno Aquino III died of HIV; and publicly declaring his readiness to "pulverize" and "exterminate" Muslim communities, as well as other men, women, children, and elderly if they did not cooperate with government efforts.[49]

Atty. Gadon did not deny that he was the man in the video clip. Instead, he invoked a denial of due process for having been preventively suspended without the opportunity to file his responsive pleading. He also insinuated that the disbarment case was politically motivated due to his affiliation with President Ferdinand Marcos, Jr., his intent to run as a senator, and his public criticisms against Senior Associate Justice Marvic Leonen and Associate Justice Benjamin Caguioa. He claimed that both justices should inhibit from his case.[50]

Additionally, he argued that his utterances were only driven by anger against Robles' tweets about President Marcos, Jr.'s allegedly unpaid tax liabilities.[51] He further maintained that he never posted nor shared the video in any social media platform, as he intended for only Robles to view it.[52] On the finding that the clip was *prima facie* evidence of gender-based online sexual harassment, he claimed that his "attack" was not based on Robles' gender, but on her character as a journalist. He also offered Robles' remarks in an interview, in which she said that she was not threatened by the clip but merely insulted by it.[53]

In deciding the disbarment case, the Court's discussion centered on four main points: (1) Atty. Gadon's due process claims; (2) his conduct portrayed in the video clip; (3) the video's interaction with social media; and (4) his liabilities, if any. These were set against the overarching principles that the practice of law is a privilege, and that access to such privilege requires having good moral character, both internally and as perceived by the public.[54]

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[48] *In re Gadon's Viral Video,* slip op. at 3, *citing* Rep. Act No. 11313 (2019), §§ 3(e) & 12.
[49] *Id.*, slip op. at 2.
[50] *Id.*, slip op. at 3.
[51] *Id.*, slip op. at 4–5.
[52] *Id.*, slip op. at 5.
[53] *Id.*
[54] *Id.*, slip op. at 6, *citing* Saludares v. Saludares, A.C. No. 10612, Jan. 31, 2023, slip op. at 1–2.

The Court began by explaining that the CPRA applies to Atty. Gadon's case. The new Code was said to have taken effect on May 30, 2023, and its retroaction clause directed its application to all pending cases.[55] Thus, although the incident which led to the disbarment proceedings occurred while the CPR governed, its ultimate resolution must be based on the CPRA.

The decision first tackled Atty. Gadon's two due process claims: first, he argued that two of the Court's justices must inhibit due to their bias against him; and second, he insisted that his preventive suspension was improper since he was not given a chance to first file a responsive pleading. The prayer for the inhibition of Justice Leonen and Justice Caguioa was quickly dispatched. The Court held that none of the circumstances for compulsory or voluntary inhibition were present. There was no clear and convincing showing that either of them had personal interests in the result, nor that they were prejudiced against Atty. Gadon. [56] As to the respondent's argument that both justices were biased since they signed the resolution which preventively suspended him, the Court added that such resolution was an act of the Court as a collegial body. It did not make sense to impute personal interest in them as individuals.[57]

To further drive home its point, the Court found Atty. Gadon guilty of direct contempt due to his "baseless accusations of partiality" against two of its own.[58] It was found that his actions undermined the authority of the courts and risked harming its dignity and stability.[59] He was also found to have violated Canon II, Section 14 of the CPRA for insinuating an improper motive against a public officer without substantial evidence.[60]

As to his argument on preventive suspension, the Court highlighted the exceptional character of a disbarment case and distinguished it from other proceedings under the Ombudsman Act, the Revised Rules on Administrative Cases in the Civil Service, and the Omnibus Rules Implementing the Labor

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[55] "After its publication in two newspapers of general circulation on May 14, 2023, the CPRA took effect 15 days thereafter, or on May 30, 2023." *In re Gadon's Viral Video,* slip op. at 7, *citing* CPRA, gen. provisions, §§ 1, 3.

[56] *Id.*, slip op. at 7–9, *citing* RULES OF COURT, Rule 137, § 1; Tan v. People, G.R. No. 242855, July 6, 2022; SC INT. RULES, Rule 8, § 1.

[57] *Id.*, slip op. at 10–11.

[58] *Id.*, slip op. at 11.

[59] *Id.*, slip op. at 11–12, *citing* Tallado v. Racoma, A.M. No. RTJ-22-022, Aug. 23, 2022; Lorenzo Shipping Corp. v. Distribution Mgmt. Ass'n of the Phils., 672 Phil. 1, 17 (2011).

[60] "A lawyer shall submit grievances against any officer of a court, tribunal, or other government agency only through the appropriate remedy and before the proper authorities.

Statements insinuating improper motive on the part of any such officer, which are not supported by substantial evidence, shall be ground for disciplinary action." *Id.,* slip op. at 13, *citing* CPRA, canon II, § 14.

Code.[61] Procedural due process comparisons could not be drawn with these other rules, since the primary objective of a disbarment case is to examine whether the respondent is still fit to continue practicing law.[62] Further, the Court found that since Atty. Gadon did not deny authorship of the video, its contents were sufficient basis to place him under preventive suspension. It was also added that the Court had to act with urgency, given that the said video had already become viral on social media.[63]

The next portion of the decision focused on Atty. Gadon's conduct, as portrayed in the video clip. The Court held that he breached Canon II, Section 2 of the CPRA, which incorporated the former Rule 7.03 found in the CPR.[64] His use of abusive language was found to be unjustified, especially given his status as a lawyer and the strongly misogynistic overtones that laced his speech. The Court also refused to accept his explanation that the outburst arose from sheer anger and passion, and denied safe harbor under the doctrine in *Reyes v. People*.[65] As a lawyer, Atty. Gadon was subjected to higher standards in his use of language. His scandalous tirade, according to the Court's calculation, discredited the entire legal profession.[66]

If indeed Atty. Gadon wanted to contradict any claims on President Marcos, Jr.'s unpaid taxes, the Court noted that he should have confined himself to "dignified legal discourse" instead of "hurling expletives" against Robles.[67] Canon II, Sections 3 and 4 of the CPRA were then cited to show that lawyers must avoid all forms of abuse and harassment, and adopt fair, dignified, and sensitive language. The hostility and misogyny exhibited in Atty. Gadon's speech palpably violated these provisions.[68]

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[61] *In re Gadon's Viral Video,* slip op. at 13–14.

[62] *Id.*, *citing* Dayos v. Buri, A.C. No. 13504, Jan. 21, 2023; Saludares v. Saludares, A.C. No. 10612, Jan. 31, 2023, slip op. at 6.

[63] *Id.*, slip op. at 14.

[64] "*A lawyer shall* respect the law, the courts, tribunals, and other government agencies, their officials, employees, and processes, and *act with courtesy, civility,* fairness, and candor *towards fellow members of the bar.*

A lawyer shall not engage in conduct that adversely reflects on one's fitness to practice law, nor behave in a scandalous manner, whether in public or private life, to the discredit of the legal profession." *Id.,* slip op. at 15, *citing* CPRA, canon II, § 2. (Emphasis in the original.)

[65] Atty. Gadon structured his defense in parallel with the doctrine in *Reyes,* such that he claimed his utterances were not only meant to express his anger and displeasure, but not to debase Robles. *See* Reyes v. People, 137 Phil. 112 (1969).

[66] *In re Gadon's Viral Video,* slip op. at 15–16, *citing* Nuezca v. Villagarcia, 792 Phil. 535, 540 (2016).

[67] *Id.*, slip op. at 15–16.

[68] *Id.*, *citing* CPRA, canon II, §§ 3–4.

The decision also doubled down on the Court's initial finding that Atty. Gadon's speech could be considered *prima facie* evidence of gender-based online sexual harassment. It clarified that a violation arises when a perpetrator performs acts likely to cause mental, emotional, or psychological distress, and fear of personal safety, regardless of the victim's reaction.[69] The allegedly nonchalant response made by Robles in an interview did not preclude her being intimidated or distressed by it. However, the Court took notice of the pending criminal complaint against Atty. Gadon for the same action and desisted from further discussing its merits.[70]

The Court then proceeded to discuss the social media aspect of the case. It was already established that Atty. Gadon did not deny his authorship of the video clip, but insisted that he did not upload or post the video himself, and that he intended for only Robles to see it. This fact pattern already distinguishes the case from *Belo-Henares* and *In re Disturbing Social Media Posts*, in which respondents were confronted with materials that they published online. Atty. Gadon's pleading highlighted how he made the video clip privately inside his car, with the purpose of sending it directly to Robles.[71]

The Court brushed aside Atty. Gadon's reasoning by saying that the scope of the CPRA is so broad that it reaches not only into the public dealings of a lawyer, but also into their private life. This was implicit in Canon II, Section 2, and explicit in Sections 3[72] and 4.[73] The Court then reiterated its precedents on the indivisibility of a lawyer's persona under its ethical rules and emphasized that such an ever-present responsibility came with being part of the legal profession.[74]

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[69] *In re Gadon's Viral Video*, slip op. at 19–20, *citing* Rep. Act No. 11313 (2019), §§ 3(e), 12.

[70] *Id.*, slip op. at 20.

[71] *Id.*, slip op. at 16–17.

[72] "A lawyer shall not create or promote an unsafe or hostile environment, *both in private and public settings*, whether online, in workplaces, educational or training institutions, or in recreational areas.

To this end, a lawyer shall not commit any form of physical, sexual, *psychological,* or economic *abuse or violence against another person.* A lawyer is also prohibited from engaging in any *gender-based harassment or discrimination.*" CPRA, canon II, § 3. (Emphasis supplied.)

[73] "A lawyer shall use only dignified, gender-fair, child- and culturally-sensitive language *in all personal and professional dealings.*

To this end, a lawyer shall not use language which is abusive, intemperate, offensive, or otherwise improper, oral or written, and whether made through traditional or electronic means, including all forms or types of mass or social media." CPRA, canon II, § 4. (Emphasis supplied.)

[74] *In re Gadon's Viral Video,* slip op. at 17–18, *citing* Velasco v. Causing, A.C. No. 12883, Mar. 2, 2021; *Belo-Henares,* 801 Phil. at 588.

Moreover, the fact that Atty. Gadon did not publish the video clip himself did not negate his liability under the CPRA. The Court observed that his intention of having only Robles view the video, coupled with the fact that she saw it elsewhere, merited the conclusion that Atty. Gadon shared it with at least one other person.[75] At this point, Canon II, Section 36 on responsible use of social media was invoked by the Court. It was clarified that responsible use was not limited only to the lawyer's act of engaging with social media platforms, but even included actions that could be propagated through them. The following passage proves quite illuminating on how this standard was applied:

> Thus, Atty. Gadon cannot exculpate himself by claiming that he "neither published nor posted nor uploaded" the subject video clip onto any social media platform. As a lawyer, *it was reasonable to expect that he understood the consequences of recording the video*, its benefits, if any, risks, and ethical implications, including the likelihood of it spreading indiscriminately, becoming available to anyone on social media, and the influence that it could have on lawyers and non-lawyers alike, not to mention the children who have been exposed, or have yet to be exposed, to the said video clip. Atty. Gadon failed to take these implications and consequences into account, and in doing so, he likewise failed in upholding the edict to responsibly use social media.[76]

Having passed over the other issues, the Court then announced its decision to disbar Atty. Gadon. It was emphasized that the disciplining powers of the Court held a four-fold purpose: "[1] to protect the public; [2] to foster public confidence in the Bar; [3] to preserve the integrity of the profession; and [4] to deter other lawyers from similar misconduct."[77] It was further said that disbarment or suspension was reserved for lawyers who performed acts that cause or reveal the loss of moral character.

Atty. Gadon's actions violated the CPRA, specifically: Canon II, Sections 1, 3, and 4 for his invectives against Robles; Canon II, Section 13 and the lawyer's oath for his insinuations against Justice Leonen and Justice Caguioa; and Canon II, Section 36 for failing to responsibly use social media.

The Court then took notice of his previous three-month suspension, in which Atty. Gadon was already warned to avoid using similar abusive language.[78]

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[75] *In re Gadon's Viral Video*, slip op. at 18.

[76] *Id.*, slip op. at 19. (Emphasis supplied.)

[77] *Id.*, slip op. at 20, *citing* Saludares v. Saludares, A.C. No. 10612, Jan. 31, 2023, slip op. at 7–8.

[78] *Id.*, slip op. at 21, *citing* Mendoza v. Gadon, A.C. No. 11810, June 26, 2019. *See also* Off. of the Ct. Administrator Circ. No. 28-2020 (2020). Suspension of Atty. Lorenzo G. Gadon from the Practice of Law for Three (3) Months.

This was appreciated as an aggravating circumstance under Canon VI, Section 38(a)(1) of the CPRA due to his repeat offense. Going one step further, five administrative cases filed with the OBC and four cases pending before the Integrated Bar of the Philippines—all of which directed against Atty. Gadon—were noted by the Court and weighed as additional evidence on his poor character.[79] Thus, his disbarment was found to be justified.

Overall, this case provided some clear insights on how the Court deployed its new social media regime, particularly Canon II, Section 36. Unlike its prior track in *Belo-Henares* and *In re Disturbing Social Media Posts*, the Court did not launch its "reasonable expectation of privacy" standard. Instead, the invasive scope of the CPRA was used to justify its application to a lawyer's private dealings. This worked to the detriment of Atty. Gadon, who appeared to craft his social media arguments along the lines drawn in *Belo-Henares*. Quite observable was his insistence that he recorded the video in the privacy of his own car, and that he did not publish it in any platform.

More importantly, the Court used Canon II, Section 36 to employ a more nuanced "reasonable expectation of consequences" analysis.[80] The text of the provision itself is quite broad, directing lawyers to "understand the benefits, risks, and ethical implications associated with the use of social media."[81] The Court reasoned that Atty. Gadon must have reasonably foreseen his video's possible virality, and the possible effects of having people view it. This marks a significant departure from the *Belo-Henares* rules, but it is a departure that may well be required by the CPRA's new standards.

What the Court did not directly address, however, is its reasons for concluding that Atty. Gadon's acts were linked to social media use. The decision itself shows that the centerpiece of his liability was the slew of vitriol hurled against Robles, captured in a self-recorded video. This was aggravated by his later insinuations against the two justices. The sources of liability were held to be other provisions on Propriety, and not specifically those pertaining to the responsible use of social media.

The social media component kicked in only because the video went viral. The closest justification offered by the Court on this point is its conjecture that Atty. Gadon must have shared the video with at least one other person, since it made its way to Robles without being sent directly by him. Still, the decision begs

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[79] *In re Gadon's Viral Video*, slip op. at 21–22.

[80] This is quite interesting, since through this approach the Court signaled its commitment to its consequence-based understanding of social media privacy. *See* Dizon, *supra* note 42.

[81] CPRA, canon II, § 36.

for a clear social media link. For example, it was not established that he shared the video using a social media platform, even if in a private and restricted message, nor that he crafted his video with social media virality in mind.

The Court could have taken judicial notice of Atty. Gadon's past use of foul, inflammatory language to gain online notoriety, and his Senate candidacy at the time. This would have made it easier to connect his video clip against Robles as another social media tactic designed to grab headlines at the expense of the legal profession's dignity. Establishing this link is important, since omitting it would enlarge Canon II, Section 36. Absent a clear connection, the provision could cover virtually any action, given the ubiquity of such platforms. This, in turn, could eventually weaken or dilute the CPRA's social media regulations.

C. *In re Request of the Public Attorney's Office to Delete Section 22, Canon III of the Proposed Code of Professional Responsibility and Accountability*[82]

The last case in this series involves the request made by the Public Attorney's Office (PAO) to delete Canon III, Section 22 of the CPRA. This provision modified the "PAO vs. PAO" rule by stating that conflict of interest shall be limited to the PAO lawyer and their direct supervisor, and that other PAO lawyers shall not be disqualified from representing the affected client upon full disclosure and written informed consent.[83]

Prior to the CPRA, adverse parties in a dispute essentially had to race against each other to secure PAO representation. Once one of them already has a PAO lawyer as counsel of record, the other party could no longer secure a PAO lawyer of their own, primarily due to a broad claim of conflict of interest. Under the CPRA, however, both adverse parties could be represented by PAO lawyers, so long as their attorneys are not the same person, and one of the attorneys is not directly supervised by the other.

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[82] [Hereinafter "*In re PAO Request*"], A.M. No. 23-05-05-SC, July 11, 2023.

[83] CPRA, canon III, § 22. "The Public Attorney's Office is the primary legal aid service office of the government. In the pursuit of its mandate under its charter, the Public Attorney's Office shall ensure ready access to its services by the marginalized sectors of society in a manner that takes into consideration the avoidance of potential conflict of interest situations which will leave these marginalized parties unassisted by counsel.

A conflict of interest of any of the lawyers of the Public Attorney's Office incident to services rendered for the Office shall be imputed only to the said lawyer and the lawyer's direct supervisor. Such conflict of interest shall not disqualify the rest of the lawyers from the Public Attorney's Office from representing the affected client, upon full disclosure to the latter and written informed consent."

The PAO's request, communicated by PAO Chief Atty. Persida Acosta, began when the CPRA was still being drafted in 2022 and continued until after its issuance.[84] At the outset, the Court clarified that it already considered Atty. Acosta's comments during its deliberations and still favored retaining the contested provision. To settle the issues raised, however, the Court proceeded to exhaustively explain its policy and refute the arguments raised by Atty. Acosta. Notable discussions include the Court's power to regulate the practice of law,[85] the accessibility objective of the modified PAO conflict of interest rule,[86] the incorrectness of loosely treating PAO like a law firm,[87] and the harmony among Canon III, Section 22 and other laws and rules which govern PAO operations.[88]

More directly related to the new social media provisions are Atty. Acosta's actions online, which did not escape the Court's attention. The Court took note of Atty. Acosta's public Facebook posts that seemed to be related to her advocacy against the new rule. For instance, the decision quoted her post in which she asked her audience to "[s]ee if the intent of the proponent [of the assailed rule] is to destroy [the] tranquility and credibility of [the] justice and legal aid system."[89] The Court further cited the following questions posted on her Facebook page:

> (a) "Be VIGILANT & See! Who is using 'Divide and Rule Policy' to destroy UNITY, PROGRESS, & PEACE?"
>
> (b) "Will you let to be tools (sic) in causing dissension, partisan and contentious quarelling (sic) among PAO lawyers at PAO? YES or NO?"
>
> (c) "The Public Attorney's Office (PAO) has been strengthened thru R.A. no. 9406, why would you weaken it thru a chaotic move?"
>
> (d) "May iisang INA, bakit kayo mag-aaway-away na magkakapatid at magkakasama sa iisang tanggulan ng katarungan????" (You only have one mother. Why would siblings and members of the same defender of justice quarrel???)[90]

In addition, Atty. Acosta was also said to have published multiple videos featuring PAO lawyers, employees, and clients who were opposed to the new rule, and had the contents of her letters circulated in several newspapers.[91] The

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[84] *In re PAO Request*, slip op. at 1–2. It was noted that these were first transmitted as comments in a letter to Chief Justice Alexander Gesmundo on September 15, 2022, then reiterated in subsequent letters dated April 20, 2023 and June 6, 2023.

[85] *Id.*, slip op. at 1–2.

[86] *Id.*, slip op. at 3–6.

[87] *Id.*, slip op. at 6–10.

[88] *Id.*, slip op. at 10–11.

[89] *Id.*, slip op. at 12.

[90] *Id.*

[91] *Id.*

Court, at this point, signaled how its patience was growing thin. It cited a "clear line between legitimate criticism and illegitimate attack, which undermine the people's confidence in the judiciary." Thus, Atty. Acosta was directed to show cause for why she should not be cited in indirect contempt for her conduct, which possibly tended to impede, obstruct, or degrade the administration of justice.[92]

It appears that the issue with Atty. Acosta was not her disagreement with Canon III, Section 22, but her innuendos which tended to turn people against the judiciary. This was further confirmed by the closing passages of the case. The Court reiterated the duty of all lawyers to respect the courts and its officers under Canon II, Section 2, and to refrain from resorting to traditional and social media to threaten the independence of the judiciary, under Canon II, Sections 14 and 42. Through her actions, Atty. Acosta was said to have violated these provisions, and was directed to show cause as to why she should not be disciplined.[93] The Court also told Atty. Acosta to stop speaking on the matter, and to cease her efforts to contact any member of the Court.

Canon II, Section 14 directs lawyers to submit grievances against officers of courts, tribunals, or government agencies through the proper channels, and warns that unsubstantiated claims of improper motives could give rise to disciplinary action.[94] The reason for its invocation is quite clear, given Atty. Acosta's insinuations in public fora, as observed by the Court.

What is quite interesting is the use of Canon II, Section 42, which is part of the new set of social media regulations under the CPRA. It states that "[a] lawyer shall not communicate, whether directly or indirectly, with an officer of any court, tribunal, or other government agency through social media to influence the latter's performance of official duties."[95] This is the first time that the Court applied this provision, and there is room to interpret it either as an intent-based regulation or a consequence-based one.

Based on the resolution, it seems that intent is determinative, in that the social media communication must be for the purpose of influencing how public officers perform their duties. Atty. Acosta was found to have violated this by publishing Facebook posts and videos that crossed the line from good faith criticism to bad faith imputations, likely with the intent of pressuring other PAO lawyers and even members of the Court. The distinguishing factor, possibly, was that the zealousness of her advocacy was eventually found to be tinged with

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[92] *In re PAO Request*, slip op. at 12–13.
[93] *Id.*, slip op. at 13–14.
[94] CPRA, canon II, § 14.
[95] Canon II, § 42.

disrespect for the Court, through use of incendiary phrases like "destroy unity, progress, [and] peace," "[cause] dissension, partisan and contentious [quarrelling]," and "weaken [PAO through] a chaotic move."[96]

It was also quite noticeable that, unlike in *In re Gadon's Viral Video,* the Court did not apply Canon II, Section 36. It would have been interesting to see how that provision would operate in this scenario, given that Atty. Acosta used social media not only to post her own opinions, but also to marshal a large, seemingly combative campaign against one of the Court's own rules.

II. CONTINUITY OF PRECEDENTS IN THE CPRA

Moving on from the social media provisions, this Part summarizes three cases decided under the CPRA, but in which the Court applied provisions that were largely retained from the CPR. Incidentally, all three cases here relate to notarial practice, and how the Notarial Rules interact with the CPRA. In resolving these disputes, the Court continued to observe precedents—carrying them over and identifying where old principles could be found in the new Code.

A. *Mendoza v. Santiago*[97]

The first case centers on notarial misconduct, in which a lawyer notarized two deeds of sale over the same property and the same parties, but with different sale prices.

John Alexander Barlaan was among the heirs who inherited a parcel of land and co-executed an extrajudicial settlement. This was acknowledged before and notarized by Atty. Cesar Santiago, Jr. in his notarial book.[98] Using the extrajudicial settlement, Barlaan caused the cancellation of the old title and the issuance of a new one in his name. He then sold 147 square meters of the land to Monette Ramos for PHP 3.13 million, evidenced by a Deed of Absolute Sale. Later, he executed another Deed of Absolute Sale over the same property and with the same buyer, but now with the price being PHP 1.5 million. Both deeds were acknowledged before and notarized by Atty. Santiago.[99]

Ramos, the buyer, later discovered that some of Barlaan's relatives were still occupying the lot that she purchased. She filed an ejectment case against them and attached the first deed of sale as evidence. Ramos eventually won the

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[96] *In re PAO Request*, slip op. at 12.
[97] A.C. No. 13548, June 14, 2023.
[98] Mendoza v. Santiago, slip op. at 2.
[99] *Id.*

case. About a year later, one of Barlaan's relatives filed a complaint for disbarment against Atty. Santiago for notarizing the two deeds of sale, alleging violations of the CPR and the 2004 Rules on Notarial Practice.[100]

In his Answer, Atty. Santiago argued that the complainant did not have any legal personality to file the case, that the issue of ownership had been finally determined, and that his acts of notarizing both deeds were irrelevant since he had discharged his function as notary public when he submitted them to the Bureau of Internal Revenue and Register of Deeds.[101]

The Integrated Bar of the Philippines – Commission on Bar Discipline ("IBP-CBD") found that the complainant had legal personality to file because she showed personal knowledge of the facts which established Atty. Santiago's violations. It also noted that his act of notarizing two deeds was done to minimize Barlaan's tax liability, in violation of the Notarial Rules and of Canon 1 of the CPR. Thus, it recommended the penalties of suspension for one year and revocation of notarial commission for 2 years.[102] The IBP Board of Governors adopted the IBP-CBD's findings, but modified the recommended penalties to suspension for two years, immediate revocation of national commission, and disqualification from being commissioned as a notary public for two years.[103]

The Court accepted and adopted the resolution of the IBP Board of Governors. It agreed with the finding that Atty. Santiago notarized the second deed of sale to lower his client's tax liability. The Court cited *Lopez v. Ramos*, which was decided under the CPR. In *Lopez,* the lawyer also notarized two deeds of sale which reflected different prices, with the goal of tax reduction.[104] There it was held that doing so constituted a violation of Canon I, Rule 1.02 of the CPR and of the Notarial Rules.[105] This analysis was substantially reproduced, carried over, and applied fully to the current case. Notably, the Court no longer pointed to the specific CPRA provision that was breached by Atty. Santiago.

In determining the appropriate penalty, the Court cited Canon VI, Section 33(p) of the CPRA which classified as a serious offense the violation of Notarial Rules committed in bad faith.[106] Canon VI, Section 37(a) was then

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[100] Mendoza v. Santiago, slip op. at 3.

[101] *Id.*

[102] *Id.*, slip op. at 3–4.

[103] *Id.*, slip op. at 4.

[104] *Id.*, slip op. at 4–7, *citing* Lopez v. Ramos, A.C. No. 12081, Nov. 24, 2020.

[105] *Id.*

[106] Mendoza v. Santiago, slip op. at 7, *citing* CPRA, canon VI, § 33(p). "Serious offenses include: […] (p) Violation of the notarial rules, except reportorial requirements, when attended by bad faith."

invoked as the basis for imposable sanctions on lawyers found guilty of committing a serious offense. It provides:

> (a) If the respondent is found guilty of a serious offense, any of the following sanctions, or a combination thereof, shall be imposed:
>
> (1) Disbarment;
> (2) Suspension from the practice of law for a period exceeding six (6) months;
> (3) Revocation of notarial commission and disqualification as notary public for not less than two (2) years; or
> (4) A fine not exceeding Php100,000.00.[107]

Based on these, the Court found it appropriate to retain the penalties recommended by the IBP Board of Governors. Atty. Santiago was suspended from the practice of law for two years, with his notarial commission immediately revoked. He was also disqualified from being commissioned as a notary for two years and warned that a repeat offense would be dealt with more severely.[108]

This case exhibited the Court's willingness to continue its line of precedents, even under the new Code, when there has been no change in the core governing principle. Once it found a prior case that fit squarely with the fact pattern brought before it, the Court did not hesitate to rule in the same way. In fact, although the Court applied the CPRA's provisions on accountability, it eventually arrived at the same penalties imposed in *Lopez*.

Perhaps what could distinguish *Lopez* from this case is the fact that, in the former decision, it was established that the lawyer prepared and notarized the two deeds of sale. This crystallized the finding that he knowingly and willfully did so to help his client avoid paying the correct tax liability. In this case however, the Court did not dwell on whether Atty. Santiago also prepared the deeds of sale. It was instead emphasized that he did not deny notarizing both deeds.

Thus, the Court concluded that he must have known about the scheme to lower his client's taxes. Although it was not highlighted in the decision, further basis might have been found in the IBP-CBD's investigation. Alternatively, perhaps the Court did not need any other proof to impute knowledge of such a plan. The fact that Atty. Santiago notarized two deeds of sale, but with the second one bearing a lower price, could have been sufficient for its finding of misconduct. Nonetheless, *Lopez* and *Mendoza* send signals to notaries public that

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[107] *Id.*, *citing* CPRA, canon VI, § 37(a).
[108] *Id.*, slip op. at 8.

the Court is acutely aware of such schemes, and that it is ready to mete out the established penalties.

B. *Ascaño v. Panem*[109]

The second case in this series also involves notarial malpractice, but this time featuring a lawyer who notarized a document in the absence of one of the affiants. Worse, the said lawyer subsequently made untruthful statements about it.

It began when Flordelina Ascaño's property was purportedly sold to Severino and Matilde Guillermo through a Deed of Absolute Sale. Ascaño insisted that there was no such sale, but found out that the deed was notarized by Atty. Mario Panem. When she confronted Atty. Panem about it, she questioned the notarization and pointed out that she never appeared before him to acknowledge the deed. He then volunteered to represent her in a civil suit to recover her property.[110]

However, in the complaint he prepared and filed, Atty. Panem made it seem like Ascaño appeared before him and presented her community tax certificate as competent evidence of identity.[111] Ascaño did not let this stand; she hired another lawyer to amend the pleading and to set the facts straight. Afterwards, she filed a complaint to have Atty. Panem disbarred for violating the Notarial Rules and the CPR. She charged Atty. Panem with notarizing the deed of sale without her presence, failing to ask for competent evidence of identity, and failing to submit his notarial register from 2006 to 2007. She further claimed that Atty. Panem violated the CPR by representing conflicting interests.[112]

Atty. Panem countered that Ascaño signed the deed in his presence and that she offered her community tax certificate to prove her identity. However, he explained that he could not show any record of this since his notarial register and documents were lost to a flood in July 2006. He also argued that he did not violate the rule against conflicting interests since he represented only Ascaño in the civil action for her property.[113]

The IBP-CBD found Atty. Panem guilty of violating the Notarial Rules and the CPR and recommended his disbarment.[114] The IBP Board of Governors

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[109] A.C. No. 13287, June 21, 2023.
[110] Ascaño v. Panem, slip op. at 2.
[111] *Id.*, slip op. at 2, 5 & 7.
[112] *Id.*, slip op. at 2, 7.
[113] *Id.*
[114] *Id.*

adopted these findings, but instead recommended a two-year suspension from the practice of law, the immediate revocation of his notarial commission, and a two-year disqualification from being recomissioned as a notary public.[115]

The Court adopted the findings and recommendations of the IBP Board of Governors, but found that Atty. Panem did not represent conflicting interests. Preliminary, the Court held that the CPRA should apply to this case, given its effectivity and retroaction. It's quite interesting, however, that the effectivity date cited by the Court here is May 29, 2023.[116] This is different compared to the May 30, 2023 date used in *In re Gadon's Viral Video*.[117]

The Court reiterated the twin requirements of an affiant's personal appearance and the notary public's knowledge or examination of the affiant's competent evidence of identity before a document may be notarized.[118] To restate the rule, notaries public are not allowed to notarize a document if at least one affiant is absent at the time of notarization or if they are not personally known or identified by the notary public through competent evidence.[119]

More credence was given to the complainant's version of events, as Atty. Panem failed to prove that Ascaño appeared before him. He could not support his claim that his notarial register was lost to a flood. The Court also observed that even if Ascaño did appear to acknowledge the deed of sale, there was no competent evidence of identity presented to Atty. Panem. The community tax certificate alleged to have been shown to him was inadequate for this purpose.[120]

Atty. Panem was also found to have violated Rule VI, Section 2 of the Notarial Rules for failing to submit his notarial report and copies of notarial documents which covered the period of March 17, 2006 to December 31, 2007. Going beyond the lack of evidence to prove the July 2006 flood, the Court noted that Atty. Panem did not explain why he did not submit his requirements for the months before and after the alleged event.[121] These violations were used as basis to hold Atty. Panem liable under Canon III, Section 2 of the CPRA.[122]

To the respondent's credit, the Court disagreed with the finding that Atty. Panem represented conflicting interests under Canon III, Section 13 of the

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[115] Ascaño v. Panem, slip op. at 3.
[116] *Id.*
[117] *See* Part I.B., *supra*.
[118] Ascaño v. Panem, slip op. at 3–4, *citing* NOTARIAL PRAC. RULE, Rule II, § 1, 12.
[119] *Id.*, slip op. at 4–5, *citing* NOTARIAL PRAC. RULE, Rule IV, § 2(b).
[120] *Id.*, slip op. at 5, *citing* Ong v. Bijis, A.C. No. 13054, Nov. 23, 2021.
[121] *Id.*, slip op. at 5–6.
[122] *Id.*, slip op. at 6, *citing* CPRA, canon III, § 2.

CPRA.[123] As a standard, it cited both the CPRA provision and *Parungao v. Lacuanan,* with the latter providing that "lawyers are deemed to represent conflicting interests when, in behalf of one client, it is their duty to contend for that which duty to another client requires them to oppose."[124] Since he represented only Ascaño in the civil action, there is no breach of the CPRA's conflict of interest rules.

However, Atty. Panem was said to have breached the CPRA when he tried to hide his wrongdoing in the civil complaint filed on Ascaño's behalf. There, he made it seem as if Ascaño appeared before him, as if fully aware of his mistake. The Court found his dishonesty to be violative of Canon III, Section 2[125] and Section 6,[126] and Canon IV, Section 1 of the CPRA,[127] as well as the Revised Lawyer's Oath.[128]

His dishonesty and violation of the Notarial Rules were classified as serious offenses under Canon VI, Section 33(b) and (p) of the CPRA. Like the holding in *Mendoza*, the Court referred to Canon VI, Section 37(a) for the imposable sanctions.[129] However, it also referred to Canon VI, Section 39[130] and 40[131] to guide its determination, given the presence of an aggravating circumstance and of multiple offenses.

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[123] "A lawyer shall not represent conflicting interests except by written informed consent of all concerned given after a full disclosure of the facts." Ascaño v. Panem, slip op. at 6–7, *citing* CPRA, canon III, § 13, ¶ 1.

[124] *Id.*, slip op. at 6–7, *citing* Parungao v. Lacuanan, A.C. No. 12071, Mar. 11, 2020. "There is conflict of interest when a lawyer represents inconsistent or opposing interests of two or more persons. The test is whether in behalf of one client it is the lawyer's duty to fight for an issue or claim, but which is his or her duty to oppose for the other client." CPRA, canon III, § 13, ¶ 2.

[125] "As an officer of the court, a lawyer shall uphold the rule of law and conscientiously assist in the speedy and efficient administration of justice.

As an advocate, a lawyer shall represent the client with fidelity and zeal within the bounds of the law and CPRA." CPRA, canon III, § 2, ¶¶ 2–3.

[126] "A lawyer shall be mindful of the trust and confidence reposed by the client." Canon III, § 6, ¶ 1.

[127] "A lawyer shall provide legal service that is competent, efficient, and conscientious. A lawyer shall be thorough in research, preparation, and application of the legal knowledge and skills necessary for an engagement." Canon IV, § 1.

[128] Ascaño v. Panem, slip op. at 8.

[129] *Id.*, slip op. at 8–9.

[130] *Id.*, slip op. at 9, *citing* CPRA, canon VI, § 39, ¶ 1. "If one (1) or more aggravating circumstances and no mitigating circumstances are present, *the Supreme Court may impose the penalties of suspension or fine for a period or amount not exceeding double of the maximum prescribed under this Rule.* The Supreme Court may, in its discretion, impose the penalty of disbarment depending on the number and gravity of the aggravating circumstances." (Emphasis supplied.)

[131] Ascaño v. Panem, slip op. at 9, *citing* CPRA, canon VI, § 40, ¶ 1. "If the respondent is found liable for more than one (1) offense arising from separate acts or omissions in a single

Even with these provisions in mind, the Court still consulted its prior rulings on the matter. It cited *Ong v. Bijis,* in which a notary public who failed to observe the twin requirements for notarization was suspended from practicing law for six months, had his notarial commission revoked, and was disqualified from being commissioned as a notary public for two years.[132] It also took note of *Lopez v. Mata*, in which the same set of penalties was imposed on a lawyer who failed to submit his notarial report.[133]

The Court ultimately decided to impose two sets of penalties corresponding to two offenses, aggravated by Atty. Panem's lack of remorse. The first offense was his failure to abide by the Notarial Rules and his "feeble attempt to cover it up after the fact," for which he was suspended from practicing law for one year. His notarial commission was also revoked, and he was disqualified from being recommissioned for two years.[134] The second offense was Atty. Panem's dishonesty, for which he was fined in the amount of PHP 100,000.50.[135]

This case provided a more thorough discussion of how violations of Notarial Rules interact with the CPRA, as compared to *Mendoza*. Here, the Court clarified that such violations may be linked to a breach of Canon III, Section 2. This was made worse by Atty. Panem's attempt to hide his mistake by using a false narration of facts in the civil complaint, and in his Answer to the administrative complaint against him. These subsequent acts gave the Court an opportunity to apply other CPRA provisions, particularly those found under Canons III and IV.

Also noteworthy is the Court's consciousness of its precedents in applying penalties. Even with specific guidelines present in Canon VI of the CPRA, the Court still undertook to consult prior analogous cases. Although it ultimately arrived at a different penalty as compared to *Ong* and *Lopez,* such a result was a necessary consequence of applying the CPRA's provisions on aggravating circumstances and multiple offenses.

C. *Niles v. Retardo*[136]

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administrative proceeding, *the Court shall impose separate penalties for each offense.* Should the aggregate of the imposed penalties exceed five (5) years of suspension from the practice of law or [PHP] 1,000,000.00 in fines, the respondent may, in the discretion of the Supreme Court, be meted with the penalty of disbarment." (Emphasis supplied.)

[132] *Id.*, slip op. at 9–10, *citing* Ong v. Bijis, A.C. No. 13054, Nov. 23, 2021.

[133] *Id.*, slip op. at 10, *citing* Lopez v. Mata, A.C. No. 9334, July 28, 2020.

[134] *Id.*

[135] *Id.*

[136] A.C. No. 13229, June 21, 2023.

The last case reviewed in this series shows how a notary public was penalized for failing to observe the rules on conflicting interests, and for drafting and notarizing an illegal agreement.

Spouses Teodora and Jose Quirante wanted to borrow some money from Spouses William Thomas and Marife Yukot Niles, and sought the help of Atty. Casiano Retardo, Jr. The prospective creditors were not very familiar with Philippine laws, given that Mr. Niles was an American citizen. Pursuant to the parties' intent, Atty. Retardo prepared an Acknowledgment Receipt and an undated Deed of Absolute Sale for the property owned by the Spouses Quirante.[137]

The Acknowledgment Receipt was to serve as evidence that the Spouses Quirante received PHP 450,000 from the Spouses Niles. It also fixed the conditions for the loan's payment and interest scheme. Of particular importance was a stipulation which provided that:

> [I]n case of non-payment of the loan after its due date, *the real property put up as collateral will be considered as payment of and for the loan, including the accrued interest thereof*, under the concept of *dacion en pago*; for this purpose, we agree to execute and deliver to Ms. Yukot the Deed of Absolute Sale involving subject property, with the condition that [the] *same shall be effective only in case of default*; we however have the option to restructure our loan provided we are updated in our interest payments.[138]

Meanwhile, the undated deed of sale was meant to be executed in case the debtors failed to pay the loan. The property was intended to be a valid security, but the words declared by the documents drafted by Atty. Retardo created a *pactum commissorium*, which is prohibited by law.[139] After going through the mechanics of their agreement, the parties signed the Acknowledgment Receipt and Atty. Retardo notarized it.

The debtors would go on to miss several payments, and the creditors sent demand letters drafted by Atty. Retardo, upon his advice. When their final demand was unheeded, and despite subsequent negotiations, Atty. Retardo then told them to proceed with taking over the property offered as security. The Deed of Absolute Sale was notarized, and procedures to transfer the title were undertaken.[140]

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[137] Niles v. Retardo, slip op. at 2.
[138] *Id.*
[139] *Id.*, slip op. at 3, *citing* CIVIL CODE, art. 2088.
[140] Niles v. Retardo, slip op. at 3–4.

A few months later, the Spouses Quirante sued the Spouses Niles to recover their property. The latter sought Atty. Retardo as their counsel, but he declined due to a broad claim of conflict of interest. This conflict was partly clarified when, in response to a subpoena, Atty. Retardo explained that he was the principal wedding sponsor for the son of the Spouses Quirante, and that assisting the Spouses Niles might "violate the attorney-client relationship."[141] The Quirantes would eventually win the case due to the nullity of the loan agreement, since the documents which Atty. Retardo drafted embodied a *pactum commissorium*.[142]

Aggrieved, the Spouses Niles filed an administrative complaint against Atty. Retardo for preparing the void agreement and for representing conflicting interests. They also emphasized that due to the respondent's actions, William Thomas suffered two mild strokes from stress, and they lost about PHP 1.56 million arising from litigation costs and foregone monetary interest.[143]

Atty. Retardo countered that he merely documented the intent of the parties. He notarized the agreements despite his reservations because they entered them freely and voluntarily. He also claimed to have told the Spouses Niles that he previously acted as the lawyer of the Spouses Quirante. Lastly, he argued that for their loan transaction, he did not become the counsel for either party since he only notarized the documents.[144]

The IBP Investigating Commissioner and the Board of Governors found Atty. Retardo guilty of violating the CPR when he did not advise the parties about the *pactum commissorium,* and when he represented conflicting interests. It was recommended that he be suspended from practicing law for one year.[145] The Court eventually upheld these findings but modified the penalties due to his violation of the Notarial Rules.[146]

The Court discussed three key points in determining the respondent's guilt: (1) his representation of conflicting interests; (2) his legal services rendered to the Spouses Niles; and (3) his failure to inform the parties about the consequences of a *pactum commissorium* stipulation. In resolving these, the Court noted that the CPRA applied to the dispute, then proceeded to weave its provisions with prior rulings to establish his violations.

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[141] *Id.*, slip op. at 4–5.
[142] *Id.*, slip op. at 5.
[143] *Id.*, slip op. at 5–6.
[144] *Id.*, slip op. at 6.
[145] *Id.*
[146] *Id.*, slip op. at 6–7.

At the outset, Canon III, Sections 13 and 17 were cited as the basis for prohibiting lawyers from representing conflicting interests. Section 13 provides for the general rule against conflicts of interest, the exception, and the test for determining when such conflict exists.[147] Section 17, meanwhile, specifies the courses of action that a lawyer must take when apprising prospective clients of potential conflicts.[148]

The Court observed that Atty. Retardo began to provide legal services to the Spouses Niles without disclosing that he previously represented the Spouses Quirante, and that he was the principal wedding sponsor of their son. Atty. Retardo violated the CPRA, even though he asserted that he never acted as an attorney for the Spouses Niles. His simple argument was that notarizing documents did not result in an attorney-client relationship.[149]

The discussion then transitioned to how an attorney-client relationship indeed existed with the Spouses Niles. Here, the Court drew from both the CPRA and a jurisprudential standard, which was established prior to the new Code's effectivity. Citing *Constantino v. Aransazo,* the Court noted that the relationship begins when "the client seeks the attorney's advice upon a legal concern."[150] Canon III, Section 3 of the CPRA, meanwhile, states that such a relationship exists upon the confluence of two factors: the client vesting upon a lawyer their confidence for the rendition of legal services; and the lawyer accepting and agreeing to render those services.[151]

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[147] "A lawyer shall not represent conflicting interests except by written informed consent of all concerned given after a full disclosure of the facts.

These is conflict of interest when a lawyer represents inconsistent or opposing interests of two or more persons. The test is whether in behalf of one client it is the lawyer's duty to fight for an issue or claim, but which is his or her duty to oppose for the other client." CPRA, canon III, § 13.

[148] "In relation to prospective clients, the following rules shall be observed:

(a) A lawyer shall, at the earliest opportunity, ascertain the existence of any conflict of interest between a prospective client and current clients, and immediately disclose the same if found to exist.

In case of an objection by either the prospective or current clint, the lawyer shall not accept the new engagement.

(b) A lawyer shall maintain the private confidences of a prospective client even if no engagement materializes, and shall not use any such information to further his or her own interest, or the interest of any current client." CPRA, canon III, § 17.

[149] Niles v. Retardo, slip op. at 9.

[150] *Id.*, *citing* Constantino v. Aransazo, A.C. No. 9701, Feb. 10, 2021.

[151] *Id.* "A lawyer-client relationship is of the highest fiduciary character. As a trust relation, it is essential that the engagement is founded on the confidence reposed by the client on the lawyer. Therefore, a lawyer-client relationship shall arise *when the client consciously, voluntarily and in good faith vests a lawyer with the client's confidence for the purpose of rendering legal services* such as providing

Applying these standards, it was found that the Spouses Niles reposed their confidence in Atty. Retardo for legal services, and that the latter had accepted and rendered them. He not only notarized the documents but also performed several legal services. The Court then exhaustively enumerated these instances, such as when he prepared and notarized the Acknowledgment Receipt and Deed of Absolute Sale, provided legal advice and instructions, and drafted and notarized the demand letters, among others.[152] He only notified the Spouses Niles about the possible conflict of interest after performing these acts, and clarified it only when he was issued a subpoena in a civil complaint filed by the Spouses Quirante.

The Court then highlighted Atty. Retardo's gross ignorance of the law, or his disregard of basic rules and jurisprudence. He breached both the CPRA and the Notarial Rules when he knowingly drafted and repeatedly failed to advise the parties about the *pactum commissorium* provision in the documents. Canon III, Section of 2 of the CPRA directs lawyers to obey the law and represent clients to the best of their ability.[153] Meanwhile, Rule IV, Section 4(a) of the Notarial Rules prohibits the performance of a notarial act when the notary public knows, or has good reason to believe, that the transaction is contrary to law.[154] To further drive home its point, the Court then issued a reminder that notaries public must perform their duties with utmost care since "notarization is not an empty, meaningless, routinary act."[155]

In imposing the appropriate penalty, the Court continued its trend of consulting Canon VI of the CPRA, as earlier established in *Mendoza* and *Ascaño*. It noted how Atty. Retardo's intentional representation of conflicting interests and gross ignorance of the law were both committed in bad faith,[156] and are thus

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legal advice or representation, *and the lawyer, whether expressly or impliedly, agrees* to render such services." CPRA, canon III, § 3. (Emphasis supplied.)

[152] Niles v. Retardo, slip op. at 9–10.

[153] "A lawyer shall uphold the Constitution, obey the laws of the land, promote respect for laws and legal processes, safeguard human rights, and at all times advance the honor and integrity of the legal profession.

As an officer of the court, a lawyer shall uphold the rule of law and conscientiously assist in the speedy and efficient administration of justice.

As an advocate, a lawyer shall represent the client with fidelity and zeal within the bounds of the law and the CPRA." *Id.*, slip op. at 11, *citing* CPRA, canon III, § 2.

[154] "A notary public shall not perform any notarial act described in these Rules for any person requesting such an act even if he tenders the appropriate fee specified by these Rules if:

(a) the notary knows or has good reason to believe that the notarial act or transaction is unlawful or immoral[.]" *Id., citing* NOTARIAL PRAC. RULE, Rule IV, § 4(a).

[155] *Id.*, slip op. at 12, *citing* Yuchengco v. Angare, A.C. No. 11892, 938 SCRA 633, 640, June 22, 2020.

[156] Niles v. Retardo, slip op. at 12, *citing* CPRA, canon VI, § 33(q), (h) & (p).

serious offenses that may be sanctioned under Canon VI, Section 37(a). Like in *Ascaño*, the Court also invoked Section 40 to govern penalties for multiple offenses.

Thus, Atty. Retardo was punished for violating Canon III, Sections 2, 13, and 17 of the CPRA, and for breaching the Notarial Rules. He was suspended for six months and one day for intentionally violating the rules on conflict of interest, and again suspended for the same period due to his gross ignorance of the law in bad faith. His notarial commission was also revoked, and he was disqualified from being recommissioned for two years.[157]

This decision further affirmed the Court's approach in marrying its precedents with the CPRA. Moving forward, it appears that invocations of CPRA will be accompanied by clarificatory explanations from jurisprudence, so long as the core principle which links both sources has been retained. Such a correspondence could be expected, since some of the additions in the CPRA were codifications of established case law.[158] This was clearly shown in the Court's discussion on conflicts of interest and the existence of an attorney-client relationship.

Still, it is useful to note that some new CPRA provisions do have nuances which set them apart from precedent. The Court's approach in this area of legal ethics does not mean that certain departures would not be made, especially when warranted.[159] It just so happened that those nuances were not determinative here.

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[157] *Id.*, slip op. at 13.

[158] *Compare* CPRA, canon III, § 13, ¶ 2 *with* Mabini Colleges, Inc. v. Pajarillo, 764 Phil. 354, 359 (2015).

[159] Recall the difference in treatment found in *Belo-Henares* as compared to *In re Gadon's Viral Video. See* Part I.B., *supra.*