IBP JOURNAL

VOL. 47
ISSUE NO.2

2nd Quarter
2022

Avenues for Case Settlement Beyond JDR
by Judge Soliman M. Santos, Jr.

Development of the Conflict of Interest Rule in Philippine Legal Ethics
by Michelle B. San Buenaventura-Dy

Protecting Tomorrow's Hope Today: The Philippine Legal Perspective from the Tender-Age Presumption to Shared Parenting
by Jose Mari Benjamin Francisco U. Tirol

The Chain of Custody Rule in Drugs Cases as Impacted by the War on Drugs: A Compilation and Analysis of Governing Laws and Recent Jurisprudence
by Justice Raymond Reynold R. Lauigan

THE OFFICIAL PUBLICATION OF THE
INTEGRATED BAR OF THE PHILIPPINES

IBP JOURNAL
INTEGRATED BAR OF THE PHILIPPINES

VOLUME 47, ISSUE 2
(2nd Quarter 2022)

BOARD OF EDITORS

ALFREDO B. MOLO III
Editor-in-Chief

MARCELINO C. RONGO
Managing Editor

ANNA MARIA D. ABAD
GENEVIEVE MARIE DOLORES BRANDARES-PAULINO
MA. SOLEDAD MARGARITA C. DERIQUITO-MAWIS
IAN RAY P. MALILONG
RODEL A. TATON
NICHOLAS FELIX L. TY
Editors

JEANNE MARL B. DOMINISAC
GABRIEL P. LEDA
LANCE RYAN J. VILLAROSA
Associate Editors

JEANNE MARL B. DOMINISAC
Program Officer

BOARD OF GOVERNORS

BURT M. ESTRADA
Chairman of the Board

ANTONIO C. PIDO
Governor for Eastern Visayas

LUCKY M. DAMASEN
Governor for Northern Luzon

PETER PAUL S. MAGLALANG
Governor for Central Luzon

MARCELINO MICHAEL I. ATANANTE IV
Governor for Greater Manila

JERWIN J. LOPEZ
Governor for Southern Luzon

JOSE A. ATIBAGOS II
Governor for Bicolandia

TOMAS E. JUNCO, JR.
Governor for Western Visayas

DANIEL C. CAMPOAMOR
Governor for Eastern Mindanao

HILARY ROMEO A. ESCOBAR II
Governor for Western Mindanao

NATIONAL OFFICERS

BURT M. ESTRADA
National President

ANTONIO C. PIDO
Executive Vice President

RANDALL C. TABAYOYONG
National Executive Director for Operations & General Counsel

GINA H. MIRANO-JESENA
National Executive Director for Planning

ETHEL G. MARAON-SERATE
National Treasurer

DOROTEO LORENZO B. AGUILA
National Secretary

AVELINO V. SALES, JR.
National Director for Bar Discipline

ERIC C. ALAJAR
National Director for Legal Aid

JEAN FRANCOIS D. RIVERA III
Assistant National Treasurer

EDWARD M. MENOR
Assistant National Treasurer

EMANUELLE A. EBARLE
Assistant National Secretary

FRANCISCO BENITO A. SAAVEDRA
Assistant National Secretary

JEFFREY B. CONSTANTINO
Deputy General Counsel

ALFREDO B. MOLO III
Editor-in-Chief, IBP Journal

MARCELINO C. RONGO
Managing Editor, IBP Journal

IAN RAY P. MALILONG
Director on Arbitration and ADR

ANDRE C. PALACIOS
Chairman, Committee for International Law and International Affairs (ILIAC)

DENNIS M. BACALA
Committee Chair on Legislation

JOB FLORANTE L. CASTILLO
Director for Peer Assistance

MANUEL JOSEPH B. IBANEZ III
Director for Chapter Affairs

MARIENNE M. IBADLIT
Director for Gender and Development

DANNY L. GAPASIN, JR.
Director on the Unauthorized Practice of Law

JOSE VICENTE B. SALAZAR
Director for Elections and Electoral Reform

NOEL G. BACAL
Director on Member Loan, Health Care & Retirement

CAESAR S. EUROPA
Director on Technology & Modernization

EMERICO O. DE GUZMAN
Presidential Adviser on Management

JOSE PERPETUO M. LOTILLA
Presidential Adviser on the Judiciary

MARTIN JOHN S. YASAY
Presidential Liaison for the Judiciary

LUIE TITO F. GUIA
Presidential Adviser on Elections & Electoral Reforms

DALE BRYAN D. MORDENO
Presidential Adviser in Executive Branch

JOHN PAOLO ROBERTO LINO A. VILLASOR
Presidential Adviser on Legal Education

JOSERO B. GAITE
Presidential Assistant for External Affairs

RODOLF JOHN G. DELA CRUZ
Presidential Adviser on Military & Police Affairs

ANGELO RAYMUNDO Q. VALENCIA
Presidential Adviser on Food Security, Environment, Education & Empowerment of Indigenous People's Right

ARBIE S. LLESIS
Presidential Adviser on Indigenous Peoples Affairs

CERILIO NEIL E. PACANA
Presidential Adviser on Local Government Affairs

FERNANDO S. PEÑARROYO
Presidential Adviser for Energy

MARLON I. YAP
Presidential Adviser on Drug Policy Reform

CONTENTS

Avenues for Case Settlement Beyond JDR............. 1
Judge Soliman M. Santos, Jr.

Development of the Conflict of Interest Rule in Philippine Legal Ethics... 9
Atty. Michelle B. San Buenaventura-Dy

Protecting Tomorrow's Hope Today: The Philippine Legal Perspective from the Tender-Age Presumption to Shared Parenting.... 59
Atty. Jose Mari Benjamin Francisco U. Tirol

The Chain of Custody Rule in Drugs Cases as Impacted by the War on Drugs: A Compilation and Analysis of Governing Laws and Recent Jurisprudence 91
Justice Raymond Reynold R. Lauigan

IBP Journal (ISSN 0118-9247) is an official publication of the Integrated Bar of the Philippines.

Subscription Rates (inclusive of postage):
Php 1,000.00 (local)
US $20.00 (foreign individual)
US $25.00 (foreign institution)

Editorial Office
Integrated Bar of the Philippines
No. 15 Doña Julia Vargas Avenue, Ortigas Center,
Pasig City, Metro Manila, Philippines 1600
Telephone: (+632) 8631-3018 • Fax: (+632) 8634-4696
Website: www.ibp.ph • Email: publications@ibp.ph

IBP Journal accepts papers dealing with legal issues and developments as well as socio-economic and political issues with legal dimensions. Only manuscripts accompanied by a soft copy, including an abstract and curriculum vitae of the author, shall be considered. Papers are published through a peer-review process undertaken by the Board of Editors.

The articles published in IBP Journal do not necessarily represent the views of the Board of Editors. The articles are representative of the views of the author/s alone and the author/s are responsible for the views expressed therein.

EDITOR'S NOTE

In this Issue, the IBP journal tackles often overlooked nuances that potentially spell either triumph or loss for a case or transaction. While substantive law lays the groundwork for seeking relief and obtaining justice, it is ultimately procedural law that provides the avenues for securing lasting relief.

These pieces on amicable settlement, lawyer's conflicts of interest, the best interest of the child, and the current administration's so called "war on drugs" use the procedural perspective to make their points clear.

In *Avenues for Case Settlement Beyond JDR*, Judge Soliman M. Santos, Jr. provides practical insight from the Bench on the modes of amicable settlement, both within and without the courts, as a speedy and mutually acceptable measure of both justice and peace for the parties.

In *Development of the Conflict of Interest Rule in Philippine Legal Ethics*, Prof. Michelle B. San Buenaventura-Dy tracks the evolution of the rules on conflict of interest and the tests for its existence. Prof. San Buenaventura-Dy approaches conflict of interest as an interplay between the attorney-client relationship and the matters involved, and examines how, under this perspective, the conflict of interest rules may be applied to modern situations in order to preserve clients' trust and confidence in their lawyers.

In *Protecting Tomorrow's Hope Today: The Philippine Legal Perspective from the Tender-Age Presumption to Shared Parenting*, Jose Mari Benjamin Francisco U. Tirol examines the development of the legal concept of shared parenting in non-traditional relationships in relation to its possible conflict with the tender-age presumption under Philippine law, and posits that Spanish law can provide a basis to reconcile these conflicts and consider the best interests of the children of these relationships.

In *The Chain of Custody Rule in Drugs Cases as Impacted by the War on Drugs: A Compilation and Analysis of Governing Laws and Recent Jurisprudence*, Justice Raymond Reynold R. Lauigan analyzes the chain of custody rule under Republic Act No. 9165 and its amendments, and tracks how this procedural matter has risen to the level of substantive law through judicial doctrines. Justice Lauigan illustrates how the judiciary's approach towards the chain of custody rule represents a major chapter in the balancing act between effective law enforcement and the protection of fundamental rights in the context of the War on Drugs.

We hope that the members of the Bar and Bench, along with allied professions, would benefit from these works.

AVENUES FOR CASE SETTLEMENT BEYOND JDR

Judge Soliman M. Santos, Jr.[*]

For those of us Judges who are understandably concerned with case disposal in the face of a heavy case load and congested dockets, it is important to realize a particular point of judicial wisdom that was shared by an outstanding former RTC Quezon City Judge (now Supreme Court Justice) Maria Filomena D. Singh in her lecture on "Best Practices on Speedy Trial and Disposition of Cases" at a PHILJA seminar on Speedy Trial and Disposition of Cases for Bicol Judges on 26 August 2011 in Hotel Venezia, Legazpi City. And that wisdom is this: **Amicable settlement is the "most effective docket-reduction tool."**

It sounds simple but it is easier said than done. Like with all judicial work, this involves attitude, knowledge, and skills: Attitude towards amicable settlement; Knowledge of the situation around the case, the parties, (yes) the counsels, AND of the procedural avenues for settlement; Skills of alternative dispute resolution. A little bit of luck will also help. In the final analysis, attitude towards amicable settlement is the most important for it to happen, whether it is the attitude of the Judge, the parties, or the counsels.

Although this short article is intended to highlight the procedural avenues for settlement at the RTC level, it also important to first address some points relevant to **attitude**

---

[*] The author is presently the Judge of the Regional Trial Court (RTC) Branch 61 in Naga City. He was the Judge of the 9th Municipal Circuit Trial Court (MCTC) of Nabua-Bato, Camarines Sur from 2010 to 2015, during which period he was also the Acting Presiding Judge of the Municipal Trial Court (MTC) of Balatan, Camarines Sur. He is the author of the book *Justice of the Peace: The Work of a First-Level Court Judge in the Rinconada District of Camarines Sur* (Quezon City: Central Books, 2015).

because the possibility of an amicable settlement starts with this. One can often see this in the body language of the parties and counsels and their pre-trial briefs. In the latter's first item on the possibility of an amicable settlement, some counsels outrightly state "None." For whatever reason, that's a bad signal, even if honest. Most often, counsels routinely or safely state that their clients are "willing [or open] to consider the possibility of an amicable settlement on such terms and conditions as are acceptable." Not much more is stated after that or a serious lack proposals of fair specific terms and conditions which show a sincere intention to settle and negotiate in good faith. Instead, the focus of pre-trial briefs quickly turns to matters preparatory to litigation like statement of the issues, stipulation of facts, documentary exhibits, testimonial witnesses, and trial dates. They can't wait to get to trial.

And sometimes, so with the Judge. It has become like a path of least resistance. Another outstanding RTC Judge, Makati City former Executive Judge Selma P. Alaras, in her lecture on "Judicial Dispute Resolution (JDR): Administrative Rules" at the PHILJA Judicial Settlement Conference for Camarines Sur Judges on 27-29 June 2016 in Avenue Hotel, Naga City, said that the SC observed that most Judges (really most?) go through the function of exploring settlement during pre-trial "perfunctorily" for various reasons, including **the fear factor** of being disqualified (or worse, administratively charged) if he goes through the process more intensively. The relatively new JDR system removes this apprehension of judges of being disqualified or administratively charged for more actively pursuing settlement. That is at least as far as JDR is concerned. I believe that even *other non-JDR* earnest settlement efforts by Judges should be accorded the same or equal protection by the SC from inhibition motions and harassment suits.

The removal of the fear factor for Judges to more actively (or judicial activist-ly) pursue settlement would help change for the better their attitudes towards amicable settlement. An attitude change also means a realization of the merits of settlement beyond case disposal, docket

reduction, and protection from administrative harassment. **From a practical court work point of view**, it would mean less work and time used for all concerned, not to mention much less human and logistical resources expended. It does not take a rocket scientist to conclude that. Even if the settlement effort takes several sittings over a period of say 3 months before a closure one way or the other, it would have been worth it because, in the ordinary scheme of things, a full-blown trial ending with a decision on the merits could conservatively take say 3 years, give or take 1 year, and so much more work and resources involved. Thus, I liken a successfully concluded settlement to the judicial equivalent of Sun Tzu's *Art of War* wisdom of winning a battle without firing a single shot or shedding a single drop of blood. A Decision Based on Compromise is easier, shorter, and more joyful to write than a decision on the merits after a long trial.

On a higher plane of public policy, no less than the Constitution in Article VIII, Section 1 mandates that it is " the duty of the courts of justice to <u>settle</u> actual controversies involving rights which are legally demandable and enforceable…" "Settle" in its plain meaning, relevant to actual legal controversies, could mean either "determine" through the power of the court to decide and pronounce a judgment after trial OR "successfully mediate" a settlement or compromise between the parties to the controversy. Either way, it is to "resolve" the controversy or dispute – which is not necessarily limited to the concerned court case/s per se. But in general, it can be said that amicable settlement or compromise agreement is (or *should be*) the **preferential option or preferred mode** of the courts in appropriate cases – to be clear, not all cases, as some kinds are "by law cannot be compromised" or by SC guidelines are "not mediatable" (more precisely, "not be referred to CAM and JDR"). In fact, it is the declared State policy in Republic Act No. 9285 (the Alternative Dispute Resolution [ADR] Act of 2004) "to <u>actively promote</u> party autonomy in the resolution of disputes or the freedom of the parties to make their own arrangements to resolve their disputes."

The best thing about ADR or amicable settlement – aside from party autonomy and ownership of both the process and more so the outcome – is its **delivery of both justice** (albeit, *a negotiated rather than litigated and adjudicated justice*) **and peace** (in the sense of a *restoration or normalization of relations* between the parties, including an end to their fighting in and out of court). The achievement of a mutually acceptable measure of both justice and peace is best achieved when the parties, with mediation assistance, resolve not only the court case but also, more importantly, their core dispute or its root cause underlying it -- "*deretso sa ugat ng alitan*." JDR Judges (and this should actually be for Trial Judges also) are advised to look into and handle social context issues in each case because cases do not exist in a vacuum from their social context.

Alternative justice can also be rendered by an allowable compromise settlement *between the parties, whereby they give and take on what is due each other*, through mediation by the court or by court-annexed mediators, and then approved and adopted by a court decision also. This is better in the sense that it makes for **a just, comprehensive, and lasting peace**. There is a particular joy and special sense of fulfillment in this kind of speedy disposition which not only resolves the dispute at its root but also restores relations between the parties. And the speedy disposition of cases is itself another constitutional mandate in the Bill of Rights.

Going now to the **procedural avenues for settlement, there are both [A] JDR and [B] non-JDR avenues for courts that are in SC-declared JDR sites** or clusters which number only more than 20 so far in the NCR and in various provinces around the country, the latest being Camarines Sur in June 2016. Of course, for courts that are not in JDR sites, there are only the non-JDR avenues. Executive Judge Alaras, in her above-mentioned lecture on JDR Administrative Rules, pointed out that there are **certain cases mandatorily covered by JDR and for that matter prior referral to Court-Annexed Mediation (CAM)**, and these are governed by the JDR guideline circulars: **A.M. No. 11-1-6-SC-PHILJA**

(especially this) and **A.M. No. 04-1-12-SC-PHILJA**. Referral to CAM of cases covered by it is a requisite for the conduct of JDR proceedings. Cases elevated to the RTC from the MTC level usually have undergone CAM which however failed. But it happens sometimes that there was no referral to CAM at the MTC level even when there should have been. In such cases, the RTC would then still have to refer the cases to CAM before they can come under JDR. Cases originally filed with the RTC are to be referred first to CAM if covered by it before they can come under JDR.

For cases not covered by JDR and CAM (and it is safe to say that there are many more of such cases particularly criminal cases at the RTC level), **the main non-JDR procedural avenue for settlement** is still the existing Pre-Trial proceedings under the **Rules of Court, Rule 18 for civil cases and Rule 118 for criminal cases**. Both JDR and non-JDR procedural avenues are **co-related with the Civil Code provisions on Compromise**, especially **Art. 2029** ("The court shall endeavor to persuade the litigants in a civil case to agree upon some fair compromise.") but also **Art. 2034** ("There may be a compromise upon the civil liability arising from an offense; but such compromise shall not extinguish the public action for the imposition of the legal penalty.").

In applicable criminal cases, the civil action is generally deemed instituted with the criminal action under Rule 111, Sec. 1(a), first paragraph. In case of settlement, the civil aspect is normally disposed of this way: The parties assisted by counsels or by a mediator would enter into a compromise agreement and submit it to the court for approval and adoption. As for the criminal aspect, its disposition is for the determination of the public prosecutor, factoring in the civil settlement, and of course subject to the approval of the court. **It is in the disposition of the criminal aspect of "settled" criminal cases where a certain procedural creativity comes in.** The disposition may take the form of a provisional dismissal, permanent dismissal, complaint withdrawal, plea bargaining to a lesser offense, or even archival.

Speaking of pre-trial, there is the more recent Pre-Trial Guidelines in **A.M. No. 03-1-09-SC** which significantly provides that in civil cases "The court shall endeavor to make the parties agree to an equitable compromise or settlement <u>at any stage of the proceedings</u> before rendition of judgment." (underscoring supplied) This is actually a very flexible provision, which mandates a resort to a settlement effort at any stage of the proceedings *at the instance of the court, even without the manifestation or motion of a party*. In comparison, Art. 2030 of the Civil Code provides that "Every civil action or proceeding shall be suspended: … If willingness to discuss a possible compromise is *expressed by one or both parties…*" The JDR system also allows for mid-trial JDR in failed-JDR cases that have already been referred to trial after the failure of the initial JDR. In this case situation, such mid-trial JDR may be granted *upon written motion by one or both parties* indicating willingness to discuss a possible compromise.

I also believe that, in certain circumstances beneficial to the parties and mutually desired by them such as manifested at the first call of their case and in order to effect *a quick settlement without necessity of CAM referral of their case even if mandatorily covered by CAM*, the court can and should proceed, *as a service to the litigants*, to speedily dispose of their case by way of a settlement pursuant to the above-quoted guidance in A.M. No. 03-1-09-SC. And while this guidance speaks of "at any stage of the proceedings before rendition of judgment," let us not forget the case of ***Jesalva vs. Bautista***,[1] which states "the law does not limit compromises to cases about to be filed or cases already pending in courts. That <u>a compromise may be effected even after final judgment</u> is impliedly authorized by Article 2040 (Civil Code)…. It is to be noted that there appears to be no limitation on the right to compromise, such as the one claimed by petitioners to exist (that there was already a final executory judgment in favor of the petitioners). We can see no reason for limiting the right of compromise to pending cases, excluding therefrom those already in the in the process

[1] 105 SCRA 348, 350-51.

of execution." That is why there is now even Appellate Court Mediation (ACM).

All told, it is important for Judges especially at the RTC level to be aware of the JDR and non-JDR procedural avenues for case settlement as the "most effective docket-reduction tool." At the RTC level, there come [1] **cases covered by CAM and JDR that *have had* prior CAM referral at the MTC level** – these should be brought to JDR soonest. There are [2] **cases covered by CAM and JDR that have *had no* prior CAM referral** – these should be referred to CAM soonest as a pre-requisite for JDR if still needed later (because of no CAM settlement). And then there are the still more numerous [3] **cases that are not covered by CAM and JDR** -- apply the Pre-Trial Rule 18 for civil cases or Rule 118 for criminal cases, and A.M. No. 03-1-09-SC for both kinds of cases, where applicable (i.e. those where compromise or settlement is not disallowed).

If we may speak of **comparative advantages**, the JDR system has the advantage of an institutionalized procedure for what might be described as an "all-out" settlement effort by the Judge, including through the use of judicial clout, separate private caucuses with one or the other party, and early neutral evaluation (ENE). To be clear, this does not mean that there are no limits or parameters for JDR. There is also the important matter of ethics for JDR Judges. But in general it can be said that non-JDR procedural avenues for settlement are still more restrained by traditional standards like "the cold neutrality of an impartial judge" – standards in jurisprudence no less but which may have to be reviewed, considering among others the Justice Reform Initiatives (JURIS) Project 2003-2008's intention to restore the importance of amicable settlement of cases and install innovative procedures that will remove the apprehensions of Judges in more actively or, better still, pro-actively pursuing it.

The JDR system is more structured, in fact prescribing four stages: (1) Opening Statement/Remarks by the JDR Judge; (2) Statements of Facts/Perspectives by Each Party; (3)

Negotiation with Court Mediation; and (4) Settlement/Compromise Agreement/Closure. The prescribed time frame at the RTC level is 2 months with extensions at the discretion of the JDR Judge. This somewhat structured approach has its advantages but these advantages could be lost if there is no exercise of some flexibility. The unstructured non-JDR procedural avenues for settlement especially under A.M. No. 03-1-09-SC are definitely more flexible, especially in its time frame of "at any stage of the proceedings before rendition of judgment." There are **"settlement moments"** that come and go in the course of the proceedings. The Judge has to be sensitive enough in order to be able to *seize these moments*. **If there is a will** (of the parties, counsels and Judge) for amicable settlement of a court case, **then there is a way**, nay, there are *several* ways and procedural avenues for this. Attitude + Knowledge + Skills + Luck = Speedy Disposal by Settlement.

DEVELOPMENT OF THE CONFLICT OF INTEREST RULE IN PHILIPPINE LEGAL ETHICS

Michelle B. San Buenaventura-Dy[*]

Abstract

The fiduciary nature of the attorney-client relationship requires the lawyer to perform their duties as the client's advocate with loyalty and zeal. The prohibition on the representation of conflicting interests is necessary to preserve the trust and confidence of the client in their lawyer.

This paper examines the development of the prohibition on representation of conflicting interests in the Philippines, from the time prior to the existence of any code of conduct for Philippine lawyers, to the adoption by the Philippine Supreme Court of the Canons of Professional Ethics of the American Bar Association in 1917, up to the Court's adoption of our own Code of Professional Responsibility in 1988. The paper discusses the development by jurisprudence of the three tests of conflict of interest and how the subsistence of the attorney-client relationship and the type of matters involved in the cases determine whether there is a violation by the lawyer of the conflict of interest prohibition. The Supreme Court applied the rule more strictly in cases where a lawyer represents two present clients against each other, such that there is a finding of a violation of the conflict of interest rule in such instances

[*] The author is an Assistant Professor of the University of the Philippines College of Law, where she teaches Legal Profession and the Law on Property, and is currently its College Secretary. She obtained both her Bachelor of Laws (LL.B.) and Bachelor of Arts in Public Administration degrees from the University of the Philippines Diliman.

regardless of the relation of the matters the lawyer is handling for the clients. However, where the attorney-client relation has already been terminated for one client, the Court found conflict of interest only where the matter handled for the former client is the same or related to the matter being handled for the present client, but not where such matters are totally unrelated to each other. The exception to the prohibition, which is the written consent of all parties after a full disclosure of the facts, is also discussed. The Court has applied this exception strictly, such that defenses like good faith or lack of monetary consideration do not absolve a lawyer from a finding of violation of the conflict of interest rule.

The paper also goes into a brief comparison of the Philippine conflict of interest rule vis-à-vis the latest American Model Rules of Professional Conduct to see whether our Code hewed to or deviated from the direction that the US rules eventually took. Even though the American Model Rules evolved to provide for specialized rules to govern specific situations, it was found that, for now, our Code is flexible enough to cover such situations, without discounting the desirability of its revision to keep up with developments in legal practice.

I. INTRODUCTION

Legal ethics, according to Malcolm, "denotes that body of principles by which the conduct of members of the legal profession is controlled," and is "that branch of moral science which treats of the duties which an attorney-at-law owes to his clients, to the courts, to the bar, and to the

public."[1] The duties of the attorney laid out in this definition is the framework used in the Code of Professional Responsibility adopted by the Supreme Court in 1988 to govern the practice of the legal profession by members of the Philippine bar.

As the client's advocate, a lawyer is expected to represent such client with zeal.[2] The lawyer is also expected to be loyal to the client.[3] These duties stem from the highly fiduciary nature of the attorney-client relation,[4] where the lawyer is expected to observe the utmost good faith toward the client, because it is only then that the client can be expected to repose full trust and confidence in the lawyer.[5] The full trust and confidence of the client is essential to the performance by the lawyer of his or her duties because it promotes "a full disclosure of the client's most confidential information to his/her lawyer for an unhampered exchange of information between them," and this can be achieved "based on an expectation from the lawyer of utmost secrecy and discretion."[6] One of the ways by which this trust can be destroyed is when a lawyer represents interests conflicting with that of the client's.

At present, the Code of Professional Responsibility (CPR) which was adopted by the Supreme Court on June 21, 1988 governs the conduct and professional obligations of lawyers in the Philippines. Before it was adopted, the Rules of Court, in particular Rules 124-131, jurisprudence, and the Canons of Professional Ethics (CPE) of the American Bar Association adopted by the Philippine Bar Association (PBA) in 1917 and 1946 were the sources of legal ethics in the

---

[1] GEORGE A. MALCOLM, LEGAL AND JUDICIAL ETHICS: ADAPTED FOR THE REPUBLIC OF THE PHILIPPINES 8 (1949), citing Warvelle, Ch. I; Rawle's Bouvier's Law Dictionary, Third Revision, Vol. I, page 1086; Carter, Ethics of the Legal Profession, Introduction by Wigmore, p. xxiv, and p. 13; and Jessup, The Professional Ideals of the Lawyer, p.4.
[2] CODE OF PROF. RESP., Canon 19.
[3] CODE OF PROF. RESP., Canon 15.
[4] MALCOLM, *supra* at 136.
[5] *Id.*
[6] Aniñon v. Sabitsana, Adm. Case No. 5098, April 11, 2012.

country.[7] Canon 6, which deals with conflict of interest, was among those adopted by the PBA in 1917.[8]

In this paper the development of the concept of conflict of interest in the Philippines will be traced along these lines. The paper will discuss the definition of the concept and the tests for determination of the existence of conflict of interest which were developed and will examine how the rule has been interpreted and applied over time.

II. CONFLICT OF INTEREST

As a concept in legal ethics, conflict of interest means the representation by a lawyer of "inconsistent interests of two or more opposing parties."[9] Its essence is that "it prevents the lawyer from devoting his time to the full measure of lawyerly devotion to one client."[10] The statement in Canon 6 of the CPE of what constitutes representation of conflicting interests is illustrative:

> The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

According to Malcolm, the reason for this rule is not only to prevent fraudulent conduct from a dishonest attorney, but also to prevent an honest lawyer from having to choose between conflicting duties or to reconcile conflicting interests instead of representing only one to its full extent.[11]

---

[7] MALCOLM, *supra* at 8.
[8] RUBEN E. AGPALO, LEGAL AND JUDICIAL ETHICS 25 (8th ed., 2009), citing In re Tagorda, 53 Phil. 37 (1927).
[9] Hornilla v. Salunat, Adm. Case No. 5804, July 1, 2003.
[10] Hilarion Aquino, *Problem Areas in Legal Ethics*, 48 ATENEO L.J. 870, 878-879 (2003).
[11] MALCOLM, *supra* at 142, citing Strong v. International Building Loan & Investment Union.

The Supreme Court in *Paz v. Sanchez*[12] provided the reason for the prohibition:

> The reason for the prohibition is found in the relation of attorney and client, which is one of trust and confidence of the highest degree. A lawyer becomes familiar with all the facts connected with his client's case. He learns from his client the weak points of the action as well as the strong ones. Such knowledge must be considered sacred and guarded with care. No opportunity must be given him to take advantage of the client's secrets. A lawyer must have the fullest confidence of his client. For if the confidence is abused, the profession will suffer by the loss thereof.[13]

According to the Supreme Court, the prohibition is "founded on principles of public policy and good taste as the nature of the lawyer-client relations is one of trust and confidence of the highest degree."[14]

The Court had the opportunity to discuss the rationales for the prohibition on representation of conflicting interests in Samson v. Era:[15]

> The prohibition against conflict of interest rests on five rationales, rendered as follows:
>
> First, the law seeks to assure clients that their lawyers will represent them with undivided loyalty. A client is entitled to be represented by a lawyer whom the client can trust. Instilling such confidence is an objective important in itself xxx.

[12] Adm. Case No. 6125, September 19, 2006, citing Maturan v. Gonzales, Adm. Case No. 2597, March 12, 1998.
[13] *Id.*
[14] Gonzales v. Cabucana, Adm. Case No. 6836, January 23, 2006.
[15] Adm. Case No. 6664, July 16, 2013, citing Law Governing Lawyers, Restatement of the Law Third, Volume 2, 2000 Edition, American Law Institute, Washington D.C., §121.

> Second, the prohibition against conflicts of interest seeks to enhance the effectiveness of legal representation. To the extent that a conflict of interest undermines the independence of the lawyer's professional judgment or inhibits a lawyer from working with appropriate vigor in the client's behalf, the client's expectation of effective representation xxx could be compromised.
>
> Third, a client has a legal right to have the lawyer safeguard the client's confidential information xxx. Preventing use of confidential client information against the interests of the client, either to benefit the lawyer's personal interest, in aid of some other client, or to foster an assumed public purpose is facilitated through conflicts rules that reduce the opportunity for such abuse.
>
> Fourth, conflicts rules help ensure that lawyers will not exploit clients, such as by inducing a client to make a gift to the lawyer xxx.
>
> Finally, some conflict-of-interest rules protect interests of the legal system in obtaining adequate presentations to tribunals. In the absence of such rules, for example, a lawyer might appear on both sides of the litigation, complicating the process of taking proof and compromise adversary argumentation.[16]

The knowledge and consent of the parties to the representation of the opposing parties have always been sufficient to exempt the lawyer from administrative liability. Before the adoption of the CPE, it was held that the knowledge and consent of both parties are sufficient to exonerate a lawyer from a charge of misconduct for representing conflicting interests, without specifying how the consent should be given.[17] Canon 6 of the CPE recognized the

[16] *Id.*

[17] In re dela Rosa, 72 Phil. 258, March 21, 1914.

consent knowingly given by the clients after full disclosure of the facts by counsel as an exception to the prohibition, again without requiring a specific form for the consent. It is under the present CPR that the form of giving the consent has been qualified, since Rule 15.03 requires the written consent of all parties after full disclosure of the facts[18] in order for the exception to apply.

III. TESTS OF CONFLICT OF INTEREST

Tests pre-CPR

Before the adoption of the CPE, there was no recognized "test" for the determination of the existence of conflicting interests. It was under the CPE that the idea of identifying a test or "yardstick" of conflicting interests was first introduced. In *Hilado v. David*,[19] a lawyer was disqualified from representing the defendant on the ground that the plaintiff had previously consulted with him about the case. In determining the existence of incompatibility of interests, the Court held that the passing of confidential information is not a condition precedent for such a finding, and that the existence of the bare relationship of attorney and client is the yardstick for testing incompatibility of interests:

> Hence the necessity of setting down the existence of the bare relationship of attorney and client as the yardstick for testing incompatibility of interests. This stern rule is designed not alone to prevent the dishonest practitioner from fraudulent conduct, but as well to protect the honest lawyer from unfounded suspicion of unprofessional practice. It is founded on principles of public policy, on good taste. As has been said in another case, the question is not necessarily one of the rights of the parties, but as to whether the attorney has

[18] CODE OF PROF. RESP., Canon 15, Rule 15.03.
[19] G.R. No. L-961, September 21, 1949.

> adhered to proper professional standard. With these thoughts in mind, it behooves attorneys, like Caesar's wife, not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing. Only thus can litigants be encouraged to entrust their secrets to their attorneys which is of paramount importance in the administration of justice.[20]

Tests under the CPR

The cases resolved under the CPR, as with the earlier cases, emphasized the importance of the duty of undivided fidelity and loyalty on the part of the lawyer[21] and the character of the relation of the lawyer and client as one of trust and confidence.[22] However, Philippine jurisprudence on conflict of interest really began to develop after the adoption of the CPR. It was after the occurrence of this milestone that the Court built upon the principles established and developed in its earlier decisions and identified and consolidated the three tests of conflict of interests that are still recognized at present.

The first case decided by the Supreme Court which applied Rule 15.03 of the CPR is *Tiania v. Ocampo.*[23] In this case, it was held that representation of conflicting interests is prohibited "not only because the relation of attorney and client is one of trust and confidence of the highest degree, but also because of the principles of public policy and good taste." While not outright abandoning the "bare relationship of attorney and client as the yardstick for testing incompatibility of interests," the Court again emphasized the lawyer's duty of undivided fidelity and loyalty to his client in

[20] *Id.*
[21] Tiania v. Ocampo, Adm. Case No. 2285, 2302, August 12, 1991 and Rosacia v. Bulalacao, Adm. Case No. 3745, October 2, 1995, among others.
[22] Abragan v. Rodriguez, Adm. Case No. 4346, April 3, 2002.
[23] Adm. Case No. 2285, 2302, August 12, 1991, citing In re Dela Rosa, 27 Phil 265-266.

identifying the following as the test to determine the existence of conflict of interest:

> The test of the conflict of interest in disciplinary cases against a lawyer is whether or not the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double-dealing in the performance thereof.[24]

The Court considered Atty. Ocampo's acts of representing his client Blaylock and at the same time advising Tiania, the opposing party, in one case, and representing Blaylock against the Angel spouses whom he advised and for whom he prepared documents, in another, as serious misconduct.[25] His acts of simultaneously representing or advising the two opposing parties will certainly invite suspicions of unfaithfulness or double-dealing, since he now has the duty of undivided fidelity and loyalty to two parties whose interests oppose each other's in the same case.

Subsequently, other tests were identified in determining the existence of conflicting interests. In *Abragan v. Rodriguez,*[26] Atty. Rodriguez represented his client Abragan in a forcible entry case, but represented the defendants in the indirect contempt case filed by Abragan in relation to the said forcible entry case. Atty. Rodriguez was found to have clearly violated Rule 15.03 of the CPR under this second test:

> [A] lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.
>
> The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidence forbids also the subsequent acceptance of retainers or employment from

---

[24] *Id.*
[25] *Id.*
[26] Adm. Case No. 4346, April 3, 2002.

> others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.[27]

The Court explained that since lawyers owe undivided allegiance to their clients, Atty. Rodriguez ought to have evaluated the situation first before accepting the engagement as defendants' counsel in the indirect contempt case, since the complainants in the said case are his clients in the forcible entry case.[28]

In *Abaqueta v. Florido*,[29] Atty. Florido represented Abaqueta in a special proceedings case where Abaqueta claimed sole ownership of the property, then afterwards represented Milagros in a civil case against Abaqueta where she claimed that she and Abaqueta are conjugal owners of that same property. The Court held that Atty. Florido violated the prohibition on representation of conflicting interests, and identified this test of conflict of interest:

> There is a representation of conflicting interests if the acceptance of the new retainer will require the attorney to do anything which will injuriously affect his first client in any matter in which he represents him and also whether he will be called upon in his new relation, to use against his first client any knowledge acquired through their connection.[30]

In representing Milagros in her claim that the subject property is conjugal in nature, Atty. Florido is opposing and contradicting the argument he previously put forth for Abaqueta that the latter is the sole owner of the property.

[27] *Id*, citing Buted v. Hernando, Adm. Case No. 1359, October 17, 1991, and Artezuela v. Maderazo, Adm. Case No. 4354, April 22, 2002.
[28] *Id*.
[29] Adm. Case No. 5948, January 22, 2003.
[30] *Id*, citing Pineda, LEGAL AND JUDICIAL ETHICS, 1999 ed. p. 199.

Quiambao v. Bamba[31] consolidated these three tests of conflict of interest:

> In broad terms, 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. Developments in jurisprudence have particularized various tests to determine whether a lawyer's conduct lies within this proscription. One test is whether a lawyer is duty-bound to fight for an issue or claim in behalf of one client and, at the same time, to oppose that claim for the other client. Thus, if a lawyer's argument for one client has to be opposed by that same lawyer in arguing for the other client, there is a violation of the rule.
>
> Another test of inconsistency of interests is whether the acceptance of a new relation would prevent the full discharge of the lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty. Still another test is whether the lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment.[32]

The three tests of conflict of interest continue to be recognized in subsequent cases decided by the Court.[33]

---

[31] Adm. Case No. 6708, August 25, 2005.

[32] *Id*, citing Canon 6, par. 2, CANONS OF PROFESSIONAL ETHICS, Hornilla v. Salunat, Adm. Case no. 5804, July 1, 2003, Northwestern University v. Arquillo, G.R. No. 6632, August 2, 2005, Tiania v. Ocampo, Adm. Case No. 2302, August 12, 1991, Abaqueta v. Florido, Adm. Case No. 5948, January 22, 2003, and Pormento v. Pontevedra, Adm. Case No. 5128, March 31, 2005.

[33] The following cases also identified the three tests of conflicting interests: Santos v. Beltran, Adm. Case No. 5858, December 11, 2003; Pormento v. Pontevedra, Adm. Case No. 5128, March 31, 2005;

IV. ATTORNEY-CLIENT RELATIONSHIP AND MATTERS INVOLVED DETERMINE CONFLICT OF INTEREST

In deciding on the disciplinary cases of lawyers concerning conflict of interest, the relation of the matter/s involved and the subsistence of the attorney-client relationship are factors that the Court looks into in determining whether there was conflict of interest. The earliest cases involved lawyers representing the two opposing parties in the same case,[34] or representing two present clients against each other in cases involving the same matter.[35] Over time, the Court extended the scope of the conflict of interest rules to cover within the prohibition the

Northwestern University v. Arquillo, Adm. Case No. 6632, August 2, 2005; Lim v. Villarosa, Adm. Case No. 5303, June 15, 2006; Pacana v. Pascual-Lopez, Adm. Case No. 8243, July 24, 2009; Castro-Justo v. Galing, Adm. Case No. 6174, November 16, 2011; Lee v. Simando, Adm. Case No. 9537, June 10, 2013; Samson v. Era, Adm. Case No. 6664, July 16, 2013; Nuique v. Sedillo, Adm. Case No. 9906, July 29, 2013; Orola v. Ramos, Adm. Case No. 9860, September 11, 2013; Jimenez v. Francisco, Adm. Case No. 10548, December 10, 2014; Bernardino v. Santos, Adm. Case No. 10583, February 18, 2015; Anglo v. Valencia, Adm. Case No. 10567, February 25, 2015; Gimeno v. Zaide, Adm. Case No. 10303, April 22, 2015; Mabini Colleges, Inc. v. Pajarillo, Adm. Case No. 10687, July 22, 2015; Vasco-Tamaray v. Daquis, Adm. Case No. 10868, January 26, 2016; Borja v. Vergara, Adm. Case No. 8592, April 18, 2016; Tulio v Buhangin, Adm. Case No. 7110, April 20, 2016; Cruz v. Reyes, Adm. Case No. 9090, August 31, 2016; Monares v. Muñoz, Adm. Case No. 5582, January 24, 2017; Medina v. Lizardo, Adm. Case No. 10533, January 31, 2017; Capinpin v. Cesa, Adm. Case No. 6933, July 05, 2017; Paces Industrial Corporation v. Salandanan, Adm. Case No. 1346, July 25, 2017; Palacios v. Amora, Adm. Case No. 11504, August 01, 2017; Bansil v. Hipolito, Adm. Case No. 11548, October 11, 2017; Romero v. Evangelista, Adm. Case No. 11829, February 26, 2018; Buena Vista Properties, Inc. v. Deloria, Adm. Case No. 12160, August 14, 2018; BSA Tower Condominium Corporation v. Reyes, Adm. Case No. 11944, June 20, 2018; Legaspi v. Fajardo, Adm. Case No. 9422, November 19, 2018; Luym v. Espina, Adm. Case No. 12332, March 18, 2019; Palalan Carp Farmers Multi-Purpose Coop v. Dela Rosa, Adm. Case No. 12008, August 14, 2019; Santos v. Navarro, Adm. Case No. 12178, October 16, 2019; Cortez v. Navarro, Adm. Case No. 12317, January 8, 2020; Burgos v. Bereber, Adm. Case No. 12666, March 4, 2020; Parungao v. Lacuanan, Adm. Case No. 12071, March 11, 2020; Tan v. Alvarico, Adm. Case No. 10933, November 3, 2020.

[34] In re: Hamilton, G.R. No. 7725, January 17, 1913.

[35] Cantorne v. Ducusin, 57 Phil. 2, August 9, 1932.

representation by lawyers of a present client against a former client for the same or related matters.[36] Eventually, jurisprudence included within the scope of the prohibition the representation of present clients against each other even if the matters involved are totally unrelated.[37]

Decisions prior to the adoption of or without reference to the CPE

Prior to the adoption of the CPE, the Supreme Court already had occasion to decide cases where the prohibition on representing conflicting interests was involved. During this time, the cases showed the application of the prohibition to a lawyer's representation of opposing parties in the same case where the conflict is clear, or in different cases but involving the same or related matters.

1. *Representation of present clients in the same case or related matters before CPE*

The earliest jurisprudence on the prohibition on representation of conflicting interests centered on situations where the lawyer represented both clients in the same case involving the same matter. In *In re: Hamilton*[38] Atty. Hamilton was suspended for six years for counseling plaintiff Andrada and preparing all pleadings necessary for the institution of the case, and then subsequently appearing as counsel for the opposing party Alburo in the same case. While Atty. Hamilton did not appear as counsel of record for Andrada, the Court decreed that Atty. Hamilton's counseling and preparing of plaintiff Andrada's pleading and his (Atty. Hamilton's) subsequent representation of the defendant Alburo in opposition of the same case constituted representation of conflicting interests.[39] Atty. Hamilton was found to have a

[36] San Jose v. Cruz, 57 Phil. 792, February 1, 1933 and Natan v. Capule, Adm. Case No. 76, July 23, 1952, to name a few.
[37] *Supra* note 31.
[38] *Supra* note 34.
[39] *Id.*

"distorted conception of the ethics of his profession" and his acts deemed "an utter disregard for his duty and his obligations to both his client and the court."[40] The case makes reference to the "ethics of the profession," but at the time of the promulgation of the case, Canon 6 of the CPE had not yet been adopted by the PBA.

In another case,[41] the lawyer, Atty. Ducusin, served as counsel for the accused in a criminal case but at the same time represented the complainant, leading the latter to believe that Atty. Ducusin could get his client (the accused) to pay for the item the complainant lost. Atty. Ducusin also induced the complainant not to appear in the hearing of the case in order to get the case against the accused, his original client, dismissed.[42] This action, among others, led the Court to find him guilty of malpractice and led to his suspension from the practice of law.

2. Representation of a present client against a former client in the same case or related matters before CPE

The termination of the attorney-client relationship does not mean freedom to appear against a former client in the same case. In *Sumañgil v. Sta. Romana*,[43] Atty. Sta. Romana represented one set of heirs in the intestate proceedings of the estate of the decedent, but subsequently appeared against said former clients in one of the petitions filed in said intestate proceedings. The Court therein found that Atty. Sta. Romana's conduct has been "highly improper and violates the rules observed by the legal profession."[44]

Lawyers were also found to have been guilty of misconduct even if they represented a client against a former client in different cases, where the matters involved are the

[40] *Id.*
[41] *Supra* note 35.
[42] *Id.*
[43] Adm. Case No. 25, October 25, 1949.
[44] *Id.*

same or related to each other. In *San Jose v. Cruz*,[45] Atty. Cruz represented San Jose in an action for recovery of a sum of money and, after winning in the lower court and withdrawing as counsel therein, filed as counsel for Spouses Martenzo and Carcalin a case for the issuance of a writ of preliminary injunction to restrain the execution of the case which he previously won for San Jose.[46] Atty. Cruz was found guilty of misconduct and was reprimanded by the Supreme Court:

> An Attorney owes loyalty to his client not only in the case in which he has represented him but also after the relation of attorney and client has terminated and it is not a good practice to permit him afterwards to defend in another case other persons against his former client under the pretext that the case is distinct from, and independent of the former case.[47]

Quoting Justice Malcolm, it further explained:

> An attorney is not permitted, in serving a new client as against a former one, to do anything which will injuriously affect the former client in any manner in which the attorney formerly represented him, though the relation of attorney and client has terminated, and the new employment is in a different case; nor can the attorney use against his former client any knowledge or information gained through their former connection.[48]

In *Natan v. Capule*,[49] Atty. Capule was also suspended for, among others, representing a new client against a former client in a different case but involving related matters. The Supreme Court again emphasized the duty of fidelity and loyalty to former clients. It said that Atty. Capule's retirement as lawyer of Natan, prior to accepting employment from

---

[45] San Jose v. Cruz, 57 Phil. 792, February 1, 1933.
[46] *Id.*
[47] *Id.*
[48] *Id,* citing MALCOLM, p. 143.
[49] Adm. Case No. 76, July 23, 1952.

Patero, "did not relieve him from his obligation of fidelity and loyalty to his former client."[50] Atty. Capule was suspended because not only did he represent conflicting interests, but he also actually utilized "papers, knowledge and information which he had received in the course of his employment as lawyer" for Natan in his representation of Capule.

In *Mejia v. Reyes*,[51] the Court found Atty. Reyes guilty of malpractice even if the matters he handled for his two clients were not exactly the same. Atty. Reyes was PNB Baguio Branch's bank attorney and notary public, and while engaged as such, he represented complainants who wanted to bring an action against the bank for cancellation of a mortgage recorded on their certificate of title.

In *Bautista v. Barrios*,[52] Atty. Barrios was suspended by the Supreme Court for two years for drafting a deed of extrajudicial partition then representing the party opposing its enforcement in the case filed for the purpose.

But in *In re: De la Rosa*,[53] the lawyer subject of the disciplinary case was exonerated from the charge even if the lawyer was "acting for and on behalf of the both parties to the controversy" because his act was done with the knowledge and consent of both parties.[54] This is despite the fact that the same matter was involved. This being the case, it is not considered malpractice because neither party was deceived by respondent lawyer. The case provided for an exception to the prohibition on representation of conflicting interests.

Decisions based on Canon 6, CPE

---

[50] *Id.*
[51] Adm. Case No. 378, March 30, 1962.
[52] Adm. Case No. 258, December 21, 1963.
[53] 72 Phil. 258, March 21, 1914.
[54] *Id.*

In 1917 and 1946, the PBA adopted the CPE.[55] Canon 6, which deals with conflict of interest, was adopted in 1917.[56] Rather than a mere reference to rules of legal ethics, or to the lawyer's oath, members of the bar now had an official code of conduct to govern their practice of the profession. Canon 6, paragraph 2 of the CPE provides that:

> 6. Adverse influence and conflicting interests
>
> It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

As with the cases which were decided prior to the adoption of or without reference to the CPE, the Supreme Court again found conflict of interest where lawyers represented adverse parties in the same case, or represented a client against a former client in a case involving the same or related matter as that for which he represented the former client.

1. *Representation of present clients in the same case or related matters under CPE*

In the case of *Vda. de Zubiri v. Zubiri*,[57] the lawyer was deemed to have committed malpractice for representing both parties in the same suit, in particular by filing the case for the plaintiff and preparing the responsive pleadings of the respondent. The Court characterized the action of the lawyer as brazenly unethical, stating that the CPE[58] "very explicitly

[55] GEORGE A. MALCOLM, LEGAL AND JUDICIAL ETHICS: ADAPTED FOR THE REPUBLIC OF THE PHILIPPINES 9 (1949).
[56] RUBEN E. AGPALO, LEGAL AND JUDICIAL ETHICS 25 (8th ed., 2009).
[57] G.R. No. L-16745, December 17, 1966.
[58] Referred to in the case as Canons of Legal Ethics.

declare that 'it is unprofessional to represent conflicting interests'." However, it refrained from ruling on the liability of the lawyer, as it was not a disciplinary case but one brought to set aside judgment.

In *Maturan v. Gonzales*,[59] Atty. Gonzales represented Casquejo in a forcible entry case against Yokingco. Subsequently, during the pendency of the motion for the issuance of a writ of execution in the case and while still being the counsel of Casquejo, Atty. Gonzales thereafter represented Yokingco in an action to annul the judgment in the said case. Atty. Gonzales was found guilty of representing conflicting interests despite his defense that his formal withdrawal as counsel for the Casquejos was unnecessary since the filing of a motion for the issuance of a writ of execution severs the lawyer-client relationship.[60] The Court in dismissing the said defense said:

> Moreover, respondent's justification for his actions reveals a patent ignorance of the fiduciary obligations which a lawyer owes to his client. A lawyer-client relationship is not terminated by the filing of a motion for a writ of execution. His acceptance of a case implies that he will prosecute the case to its conclusion. He may not be permitted to unilaterally terminate the same to the prejudice of his client.[61]

Even assuming that the lawyer-client relationship between Atty. Gonzales and the Casquejos had been terminated before he represented Yokingco, however, he would still have violated the prohibition, since the matters he handled for the opposing parties are related. The decisions of the Supreme Court interpreting Canon 6 of the CPE were consistent in holding that even after the termination of the lawyer-client relation, the lawyer is not free to represent a new client whose interests oppose that of his former client's in the same or related matter.

---

[59] Adm. Case No. 2597, March 12, 1998.
[60] *Id.*
[61] *Id.*

2. *Representation of a client against a former client in the same case or related matters under CPE*

In *Pasay Law and Conscience Union, Inc. v. Paz*,[62] the Court found the lawyer liable based on Section 6 of the Canons of Legal Ethics and Section 20(e) of Rule 138 of the Revised Rules of Court. In this case, Atty. Paz in his capacity as Legal Officer and Chief Prosecutor took part in the investigation of a case against former Pasay City Mayor Cuneta, but upon his resignation from government, he subsequently represented Cuneta in the preliminary investigation of the same case which he previously investigated. He was found liable despite his eventual withdrawal as counsel of Cuneta.

In *Vda. de Alisbo v. Jalandoon*,[63] Atty. Jalandoon was suspended by the Court for representing one party in the probate proceedings and then representing the opposing party in a complaint for revival of judgment of such case. The lawyer's defense was that he did not know that the respondents in the probate proceedings were his clients in the past until the pre-trial of the case. According to the Court:

> In view of his former association with the Saleses, Attorney Jalandoon, as a dutiful lawyer, should have declined the employment proffered by Alisbo on the ground of conflict of interest. Had he done that soon enough, the Alisbos (herein complainants) would have had enough time to engage the services of another lawyer and they would not have lost their case through prescription of the action.
>
> xxx
>
> The surrounding circumstances leave us with no other conclusion than that Attorney Jalandoon, betrayed his client Ramon Alisbo's trust and did not champion his cause with that wholehearted

[62] Adm. Case No. 1008, January 22, 1980.
[63] Adm. Case No. 1311, July 18, 1991.

> fidelity, care and devotion that a lawyer is obligated to give to every case that he accepts from a client. There is more than simple negligence resulting in the extinguishment and loss of his client's right of action; there is a hint of duplicity and lack of candor in his dealings with his client, which call for the exercise of this Court's disciplinary power.[64]

In *Buted v. Hernando*,[65] the Court held that "the mere fact that respondent had acted as counsel for Benito Bolisay in the action for specific performance should have precluded respondent from acting or appearing as counsel for the other side in the subsequent petition for cancellation of the Transfer Certificate of Title of the spouses Generosa and Benito Bolisay."

Decisions under the CPR

On June 21, 1988, the Supreme Court adopted the CPR, which "establishes norms of conduct and ethical standards for all lawyers, including those in the government service, to observe in their professional, official and private capacities."[66] The provision prohibiting lawyers from representing conflicting interests is found in Canon 15, Rule 15.03:

> Rule 15.03. - A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

The Committee which drafted the proposed Code originally had a different proposed rule for the prohibition on representation of conflicting interests, which was taken from Canon 6, paragraph 2 of the Canons of Professional Ethics. They originally proposed the following rule:

---

[64] *Id.*
[65] Adm. Case No. 1359, October 17, 1991.
[66] AGPALO, *supra* note 56 at 26.

> Rule 15.03. – A lawyer shall not represent conflicting interests. He represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose. However, in matters which are neither litigious nor contentious, he may represent clients with conflicting interests after full disclosure to them and with their prior written consent.[67]

As explained by the Committee:

> This rule departs from the Canons of Professional Ethics which permits a lawyer to represent conflicting interests even in a litigation or where the issues between the parties are contentious provided that the parties expressly agree. Under this rule, the lawyer cannot represent both parties in a case, even with their consent. It is hard to visualize a litigation where a lawyer can be justified in representing both the conflicting interests.
>
> Where the lawyer is asked to draft a contract between the parties or to intervene in a matter which requires minor legal advice, the lawyer should secure the written consent of the parties.
>
> But even in these cases, the lawyer should not continue to act for both of the parties if a contentious issue develops between them. This rule applies to multiple clients, like co-plaintiffs or co- defendants, with potentially conflicting interests. The lawyer should immediately withdraw from serving the multiple clients the moment any contentious issue becomes imminent.[68]

However, the final Code approved by the Supreme Court did not contain the stricter iteration of the rule

---

[67] INTEGRATED BAR OF THE PHILIPPINES, PROPOSED CODE OF PROFESSIONAL RESPONSIBILITY 78 (1979).
[68] *Supra* at 81-82.

proposed by the Committee and instead allowed as an exception the representation of conflicting interests as long as both parties provide written consent after full disclosure of the facts, regardless of the litigiousness or contentiousness of the issues involved. This present rule gives lawyers more leeway in accepting engagements from clients, as long as they obtain the written consent of their clients after a full disclosure of the facts as required.

The stricter requirement with respect to the written exception is not the only development brought about by the CPR. Aside from solidifying the three tests of conflict of interests, lawyers for the first time have been found guilty of representing conflicting interests even if the matters for which he represented both clients are totally unrelated to each other, as long as there is an existing lawyer-client relationship with both clients.[69] It is an expansion of the prohibition, as the cases resolved prior to the CPR found conflict of interest in situations only where the lawyer represented clients in the same case or in different cases where the matters involved are the same or related to each other. At some point, this expanded rule was even further extended to cover the representation of a present client against a former client for totally unrelated matters.[70] However, this trend was eventually reversed and rules were identified for determining when lawyers are prohibited from representing clients against each other in situations where the matters involved are totally unrelated.[71]

When the cases handled by the lawyer for his clients, whether they be both present clients or a former and a present client, involve the same or related matters, jurisprudence has been consistent in finding that there is conflict of interest unless there is written consent of the parties after full disclosure of the facts. This is in consonance with the conflict of interest decisions by the Court under the CPE and even prior to its adoption.

---

[69] Quiambao v. Bamba, Adm. Case No. 6708, August 25, 2005.
[70] Anglo v. Valencia, Adm. Case No. 10567, February 25, 2015.
[71] Parungao v. Lacuanan, Adm. Case No. 12071, March 11, 2020.

1. Representation of present clients in the same case or related matters under the CPR

In *Sibulo v. Cabrera*,[72] Atty. Cabrera was found guilty of representing conflicting interests for acting as counsel for the defendant Marcelo and then entering his appearance for the plaintiff Sucaldito in the same case, without withdrawing as counsel for Marcelo. In representing both the plaintiff and the defendant in the same case, the lawyer is no longer able to "serve either of his said clients faithfully":

> Respondent was bound to faithfully represent his client in all aspects of subject civil case. When he agreed to represent the defendant and later on, also the plaintiff in the same case, he could no longer serve either of his said clients faithfully, as his duty to the plaintiff did necessarily conflict with his duty to the defendant. The relation of attorney and client is based on trust, so that double dealing which could sometimes lead to treachery, should be avoided.[73]

The case of *Artezuela v. Maderazo*[74] has the erring lawyer representing both parties in the same case. Atty. Maderazo drafted the Answer of the defendant to the pleading he filed for his complainant client, leading to his suspension for violation of Rule 15.03 of the CPR. Again in *Northwestern University v. Arquillo*,[75] the lawyer was also disciplined for representing both parties in the same consolidated case. In *Perez v. De La Torre*,[76] Atty. Torres prepared the extrajudicial confessions of the murder suspects, while representing the heirs of the murder victims at the same time. He was found guilty of representing conflicting interests, since "his representation of opposing

[72] Adm. Case No. 4218, July 20, 2000.
[73] *Id.*, citing Hilado v. David.
[74] Adm. Case No. 4354, April 22, 2002.
[75] Adm. Case No. 6632, August 2, 2005.
[76] Adm. Case No. 6160, March 30, 2006.

clients in the murder case invites suspicion of double-dealing and infidelity to his clients."[77]

In *Hornilla v. Salunat*,[78] the Supreme Court was asked to decide whether Atty. Salunat was guilty of representing conflicting interests when his law firm, which is the retained counsel of the Philippine Public School Teachers Association (PPSTA), subsequently represented the members of the PPSTA board of directors in the intra-corporate case filed against them by members of PPSTA. In finding that he violated the prohibition on representation of conflicting interests, the Court said:

> In the case at bar, the records show that SEC Case No. 05-97-5657, entitled 'Philippine Public School Teacher's Assn., Inc., et al. v. 1992-1995 Board of Directors of the Philippine Public School Teacher's Assn. (PPSTA), et al.,' was filed by the PPSTA against its own Board of Directors. Respondent admits that the ASSA Law Firm, of which he is the Managing Partner, was the retained counsel of PPSTA. Yet, he appeared as counsel of record for the respondent Board of Directors in the said case. Clearly, respondent was guilty of conflict of interest when he represented the parties against whom his other client, the PPSTA, filed suit.[79]

This case applied the conflict of interest rule in derivative suits, stating that "a lawyer engaged as counsel for a corporation cannot represent members of the same corporation's board of directors in a derivative suit brought against them. To do so would be tantamount to representing conflicting interests, which is prohibited by the Code of Professional Responsibility."[80] Moreover, it was held that the corporation in this case "should be presumptively incapable of giving valid consent," hence the representation of

---

[77] *Id.*
[78] Adm. Case No. 5804, July 1, 2003.
[79] *Id.*
[80] *Id.*

conflicting interests should not be "waivable by consent in the usual way."[81]

There is also conflict of interest even if on the face of the cases it appears that the causes of action in the two cases are different. Such was the situation obtaining in *Ilusorio-Bildner v. Lokin*,[82] where Atty. Lokin was found to have represented conflicting interests. He represented the defendant Ilusorio in a Sandiganbayan case where the subject matter is a dispute regarding the shares in POTC owned by the National Government. In the said case, there was a Compromise Agreement reached which vested on Ilusorio ownership and voting rights on POTC shares. Atty. Lokin then questioned this ownership in his Memorandum for his second client, Nieto, in a case before the Securities and Exchange Commission, and advocated therein that the SEC case is a premature action to enforce such Compromise Agreement. Despite Atty. Lokin's claim that there is no identity of causes of action between the Sandiganbayan case and the SEC case, since the former involved a dispute regarding the shares in POTC owned by the National Government while the latter involved a dispute regarding the PHILCOMSAT election of its Board of Directors and corporate officers, he was found guilty of representing conflicting interests. The conflict of interest lies in Atty. Lokin "advocating an interest hostile to the implementation of the same Compromise Agreement that he had priorly negotiated for Ilusorio"[83] in his representation of Nieto in the SEC case.

2. *Representation of a present client against a former client in the same or related action under the CPR*

---

[81] *Id.*, citing Harvard Law Review, Developments in the Law: Conflict of Interest, 94 HARV. L. REV. 1244, 1339- 1342 (1981), cited in Solomon, Schwartz, Bauman & Weiss, Corporations: Law and Policy (3rd ed.) 1129 (1994).
[82] Adm. Case No. 6554, December 14, 2005.
[83] *Id.*

In the representation of a present client against a former client, the Court decreed that the matters or cases involved should be the same or related in order for conflict of interest to exist. It points to the client's confidence as the justification for such rule:

> We held in *Nombrado v. Hernandez* that the termination of the relation of attorney and client provides no justification for a lawyer to represent an interest adverse to or in conflict with that of the former client. The reason for the rule is that the client's confidence once reposed cannot be divested by the expiration of the professional employment. Consequently, a lawyer should not, even after the severance of the relation with his client, do anything which will injuriously affect his former client in any matter in which he previously represented him nor should he disclose or use any of the client's confidences acquired in the previous relation.[84]

The reason for the prohibition is to protect lawyers from "unfounded suspicion of unprofessional practice."[85]

Another justification for a finding of conflict of interest even if the attorney-client relationship with one client has already been terminated is the avoidance of suspicion that the lawyer used information obtained from the former client in the new case, as explained in *Pormento v. Pontevedra*:[86]

> Moreover, we have held in *Hilado vs. David* that:
>
> > Communications between attorney and client are, in a great number of litigations, a complicated affair, consisting of entangled relevant and irrelevant, secret

[84] 84 Samala v. Valencia, Adm. Case No. 5439, January 22, 2007, citing also Natan v. Capule, 91 Phil. 640, 648.
[85] Abragan v. Rodriguez, Adm. Case No. 4346, April 3, 2002.
[86] Adm. Case No. 5128, March 31, 2005, citing Hilado v. David.

> and well known facts. In the complexity of what is said in the course of dealings between an attorney and client, inquiry of the nature suggested would lead to the revelation, in advance of the trial, of other matters that might only further prejudice the complainant's cause.

> Thus, respondent should have declined employment in Criminal Case No. 3159 so as to avoid suspicion that he used in the criminal action any information he may have acquired in Civil Case No. 1648.[87]

However, it is not necessary that the lawyer in representing the new client actually used confidential information acquired from the former client in order for the prohibition to apply.[88] As stated in *Pormento,* the lawyer should have declined the employment in the second case to avoid suspicion that information gained by him in his former employment was used for the second case. It is enough that a suspicion of such misuse can be raised because of the lawyer's past relation to the former client.

In *Aniñon v. Sabitsana*,[89] Atty. Sabitsana was found guilty of representing conflicting interests when, after having prepared the Deed of Sale through which Aniñon's common-law husband transferred a parcel of land to her, Atty. Sabitsana subsequently represented the legal wife in a case seeking to annul the very same Deed of Sale he prepared for Aniñon, the common-law wife. This case again emphasized the highest level of trust and confidence which is imbued in the relationship between a lawyer and the client.[90] The importance of "unhampered exchange of information" between the lawyer and the client was highlighted:

---

[87] *Id.*

[88] Ylaya v. Gacott, Adm. Case No. 6475, January 30, 2013, citing Aniñon v. Sabitsana.

[89] Adm. Case No. 5098, April 11, 2012.

[90] *Id.*

> The relationship between a lawyer and his/her client should ideally be imbued with the highest level of trust and confidence. This is the standard of confidentiality that must prevail to promote a full disclosure of the client's most confidential information to his/her lawyer for an unhampered exchange of information between them. Needless to state, a client can only entrust confidential information to his/her lawyer based on an expectation from the lawyer of utmost secrecy and discretion; the lawyer, for his part, is duty- bound to observe candor, fairness and loyalty in all dealings and transactions with the client. Part of the lawyer's duty in this regard is to avoid representing conflicting interests, a matter covered by Rule 15.03, Canon 15 of the Code of Professional Responsibility quoted below:
>
> > Rule 15.03. A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.[91]

Since lawyers have been found guilty of violating Rule 15.03 despite the lack of use of confidential information obtained from one client against the other, with all the more reason should a lawyer who used information acquired in a previous employment for the cause of his present client be held liable. In *Paces Industrial Corp. v. Salandanan*,[92] the Court held that:

> Here, contrary to Salandanan's futile defense, he sufficiently represented or intervened for Paces in its negotiations for the payment of its obligation to E.E. Black Ltd. The letters he sent to the counsel of E.E. Black Ltd. identified him as the Treasurer of Paces. Previously, he had likewise represented Paces in two (2) different

[91] *Id.*

[92] Adm. Case No. 1346, July 25, 2017.

> cases. It is clear, therefore, that his duty had been to fight a cause for Paces, but it later became his duty to oppose the same for E.E. Black Ltd. His defense for Paces was eventually opposed by him when he argued for E.E. Black Ltd. Thus, Salandanan had indisputably obtained knowledge of matters affecting the rights and obligations of Paces which had been placed in him in unrestricted confidence. The same knowledge led him to the identification of those attachable properties and business organizations that eventually made the attachment and garnishment against Paces a success. To allow him to utilize said information for his own personal interest or for the benefit of E.E. Black Ltd., the adverse party, would be to violate the element of confidence which lies at the very foundation of a lawyer-client relationship.[93]

The prohibition on representing a present client against a former client for the same or related matter applies regardless of the degree of adverse interests.[94] It is said to be present "even if the inconsistency is remote, [or] merely probable."[95] Thus, the lawyer in *Hierro v. Nava*[96] was found guilty of representing conflicting interests even if the cases he handled for the former client were criminal cases for grave threats, grave coercion, falsification, perjury, estafa, and resistance, while the case he handled for the present client against the former client is a petition for the issuance of a Temporary Protection Order (TPO). In justifying the petition and in order to show the maltreatment received by his present client, Atty. Nava cited the criminal cases that he handled for the former client to show the latter's "propensity for violence". In doing so, the lawyer is "implying that there is merit in these cases which is diametrically opposed to his

[93] *Id.*
[94] Canillo v. Angeles, Adm. Case No. 9899, September 4, 2018.
[95] Tan-Te Seng v. Pangan, Adm. Case No. 12829 and Adm. Case No. 12830, September 16, 2020.
[96] Adm. Case. No. 9459, January 7, 2020.

position as defense counsel of Hierro,"[97] even if the actions he handled for the former and present clients are not related.

Advising and taking on the legal concern of two clients together and then subsequently abandoning one and taking up the cause of the other also resulted in a finding of a violation of the prohibition. Such was the situation in *Tan-Te Seng v. Pangan*,[98] where Atty. Pangan was initially introduced to and advised both the mother and the wife of the decedent for the purpose of settling the latter's estate, even asking the parties to provide him documents needed to prepare the Deed of Extrajudicial Settlement. However, he subsequently excluded the mother from the settlement and represented the wife in the case for annulment of extrajudicial settlement filed by the mother.

3. *Representation of present clients in totally unrelated cases under the CPR*

A new doctrine emerged under the CPR regarding conflict of interests where the matters involved in the cases the lawyer handles for two clients are totally unrelated to each other. In jurisprudence decided under the CPR, lawyers have been found guilty of representing conflicting interests when they represent a client against another present client even if the matters involved in the cases are totally unrelated. The bare fact of representing two present clients even in unrelated cases already creates a suspicion of unfaithfulness or double-dealing on the part of the lawyer.[99]

In *Quiambao v. Bamba*,[100] Atty. Bamba was suspended for representing the complainant Quiambao in an ejectment case and then afterwards filing a replevin case against Quiambao on behalf of the corporation of which she used to be president and managing director. In holding that Atty. Bamba is liable for representing conflicting interests, the

---

[97] *Id.*
[98] *Supra* note 96.
[99] Quiambao v. Bamba, Adm. Case No. 6708, August 25, 2005, Nuique v. Sedillo, Adm. Case No. 9906, July 29, 2013.
[100] Quiambao v. Bamba, Adm. Case No. 6708, August 25, 2005.

Court explained why the prohibition still applies to him even if the matters involved in the cases are unrelated:

> In this case, it is undisputed that at the time the respondent filed the replevin case on behalf of AIB he was still the counsel of record of the complainant in the pending ejectment case. We do not sustain respondent's theory that since the ejectment case and the replevin case are unrelated cases fraught with different issues, parties, and subject matters, the prohibition is inapplicable. His representation of opposing clients in both cases, though unrelated, obviously constitutes conflict of interest or, at the least, invites suspicion of double-dealing. While the respondent may assert that the complainant expressly consented to his continued representation in the ejectment case, the respondent failed to show that he fully disclosed the facts to both his clients and he failed to present any written consent of the complainant and AIB as required under Rule 15.03, Canon 15 of the Code of Professional Responsibility.[101]

The Court also ruled the same way in *Nuique v. Sedillo*,[102] where Atty. Sedillo was found guilty of representing conflicting interests in appearing for Estrelieta and Manuel in several cases against Kiyoshi, a client he is representing in another case, even if the cases for which he is representing Kiyoshi are totally unrelated to those he is handling for Estrelieta and Manuel. The Court said that it is immaterial that the cases are totally unrelated to each other:

> The respondent's representation of Estrelieta and Manuel against Kiyoshi, notwithstanding that he was still the counsel of Kiyoshi and Estrelieta in the case against Amasula, creates a suspicion of unfaithfulness or double-dealing in

[101] *Id.*
[102] Nuique v. Sedillo, Adm. Case No. 9906, July 29, 2013.

> the performance of his duty towards his clients. Under the circumstances, the decent and ethical thing which the respondent should have done was to advise Estrelieta and Manuel to engage the services of another lawyer.

In *Gonzales v. Cabucana*,[103] Atty. Cabucana was found guilty of representing conflicting interests when he represented plaintiff Gonzales in a complaint for sum of money then subsequently represented the sheriff against whom Gonzales filed civil and criminal cases for the sheriff's failure to implement the writ of execution properly. His defense that there is no conflict of interest since the civil case he handled for Gonzales is not related to the criminal case he handled for the sheriff was found to be unmeritorious:

> The claim of respondent that there is no conflict of interests in this case, as the civil case handled by their law firm where Gonzales is the complainant and the criminal cases filed by Gonzales against the Gatcheco spouses are not related, has no merit. The representation of opposing clients in said cases, though unrelated, constitutes conflict of interests or, at the very least, invites suspicion of double-dealing which this Court cannot allow.[104]

4. *Representing former and present clients in totally unrelated matters under the CPR*

With respect, however, to the representation of a present client against a former client where the new case is totally unrelated to the matter for which the lawyer represented the former client, the jurisprudence is not consistent. Initially, the treatment by the Supreme Court was that there is no violation of the rule prohibiting representation of conflicting interests in these instances,

[103] Adm. Case No. 6836, January 23, 2006.
[104] *Id.*, citing Quiambao v. Bamba.

because transactions that occurred after the lawyer's engagement are no longer covered by his or her duty of loyalty to the client.[105] There were decisions, however, where the Court became strict in interpreting the prohibition and ruled that conflict of interest arises in the representation of former and present clients even where the matter is totally unrelated to the matter handled previously.[106] Soon thereafter, the Court reverted to the old doctrine that the representation of a client against a former client in totally unrelated matters does not constitute a violation of the prohibition. Such is the rule currently being followed at present.

In *Lim-Santiago v. Sagucio*,[107] there was no conflict of interest when the public prosecutor conducted the preliminary investigation and recommended the filing of informations against a stockholder and former president of the corporation where he was previously employed as personnel manager and retained counsel. The Court stated that the lawyer's duty of loyalty to a former client "does not cover transactions that occurred beyond the lawyer's employment with the client."[108] Moreover, the Court required that Atty. Sagucio should have used against Taggat, his former client, information that he obtained when he was its lawyer in order for him to be found guilty of violating the prohibition.[109] This was not proved in the case, leading to his exoneration from the charge of representing conflicting interests.

In *Palm v. Iledan*,[110] Atty. Iledan represented Soledad in a case against Comtech, for which he was formerly a retained counsel. In ruling that he was not guilty of representing conflicting interests, the Court said that the lawyer is dutybound "to protect the client's interests only on matters that he previously handled for the former client and not for

[105] Lim-Santiago v. Sagucio, Adm. Case. No. 6705, March 31, 2006.
[106] Anglo v. Valencia, Adm. Case No. 10567, February 25, 2015.
[107] *Supra* note 105.
[108] *Id.*
[109] *Id.*
[110] Adm. Case No. 8242, October 2, 2009, citing Lim-Santiago v. Sagucio.

matters that arose after the lawyer-client relationship has terminated."

Seares v. Gonzales-Alzate[111] involves a lawyer representing a client in a case for abuse of authority, oppression, and grave misconduct against a former client whom he previously represented in an election case. Similar to the abovementioned decisions, the Court ruled that there was no conflict of interest because "[T]he prohibition did not cover a situation where the subject matter of the present engagement was totally unrelated to the previous engagement of the attorney."[112] It also held that the prohibition requires that there is "identity of parties or interests involved in the previous and present engagements," and that, as in the *Lim-Santiago* case, the lawyer must have used against the former client any confidential information gained from the previous employment.[113]

The Court, however, took a stricter approach in the case of Anglo v. Valencia,[114] which is a departure from the doctrine that there is no conflict of interest if a lawyer represents a present client against a former client as long as the matters for which he represented both are totally unrelated to each other. Atty. Valencia represented Anglo in labor cases instituted against him, but after the termination of the cases he represented a new client in a qualified theft case against Anglo. Finding a violation of the conflict of interest rule, the Court held that "a lawyer is prohibited from representing new clients whose interests oppose those of a former client in any manner, whether or not they are parties in the same action or on totally unrelated cases,"[115] and that "a lawyer is prohibited from representing new clients whose interests oppose those of a former client in any manner, whether or not they are parties in the same action or on totally unrelated cases." It is to be noted that *Anglo* cites *Quiambao* as basis, but the factual circumstances in both

[111] Adm. Case No. 9058, November 14, 2012.
[112] *Id.*
[113] *Id.*
[114] *Supra* note 106.
[115] *Id.*

cases are different since the clients in *Quiambao* are both present clients and therefore, the stricter rule applies.

After *Anglo*, the Court reverted to the previous doctrine when in Gimeno v. Zaide[116] it held that there was no conflict of interest in Atty. Zaide's representation of Gimeno in a case for annulment of land title and his subsequent representation of Somontan against Gimeno in a case before the Ombudsman for alleged mishandling of funds. The Court used two of the three tests of conflicting interests in holding that no violation of the prohibition existed here since the cases are totally unrelated, and that the lawyer-client relationship with Gimeno already ceased when Atty. Zaide's services were engaged by Somontan.[117] Applying the first test of conflict of interests, the Court found no double- dealing on the part of Atty. Zaide because at the time his services were engaged by Somontan, he was no longer the counsel of Gimeno. This conclusion was also supported by the lack of evidence that Atty. Zaide used any confidential information against Gimeno which he acquired when he was still her counsel in the annulment case.[118]

This ruling was applied in subsequent cases such as *Luym v. Espina*,[119] *Cortez v.* Navarro,[120] and *Parungao v. Lacuanan*.[121] In *Luym*,[122] the lawyer was found not to have violated the prohibition because of the lack of relation between the matters he handled for the former client (drafting of a letter-complaint for a private matter) and the present client (a corporate matter). Furthermore, Atty. Espina is a co-defendant in the action which the complainant is claiming conflicts with the matter that the lawyer handled for her previously, and the Court held that there is no conflict of interest since Atty. Espina is a co-defendant and "clearly defending himself and his reputation having been impleaded

[116] Adm. Case No. 10303, April 22, 2015.
[117] *Id.*
[118] *Id.*
[119] Adm. Case No. 12332, March 18, 2019.
[120] Adm. Case No. 12317, January 8, 2020.
[121] Adm. Case No. 12071, March 11, 2020.
[122] *Supra* note 119.

in the case as the corporate secretary."[123] In *Cortez*,[124] the Court reiterated the principles laid down in earlier cases of lawyers representing former and present clients where the matters involved are totally unrelated. It was stressed here that there will be conflict of interest in the case of a lawyer appearing for an adverse party against a former client "in a matter which is related, directly or indirectly, to the present controversy."[125] It was also reiterated that the lawyer's duty of loyalty to a former client does not extend to matters that occurred after the termination of the lawyer's employment.[126]

While the *Anglo* case has seemingly been overturned by these more recent cases, there is a subsequent decision, *Romero v. Evangelista*[127] that contributed to confusion with respect to what constitutes conflict of interest in situations where a lawyer represents a party against a former client. *Romero* seemingly held that there is conflict of interest even if the matter handled for the present client is totally unrelated to the case handled for the former client. The IBP-CBD tasked with investigating the complaint in the case classified Atty. Evangelista's first client, Adela,[128] as a former client. There is also no finding here that the matters are related to each other, only that Atty. Evangelista was counsel for Adela in cases involving properties of her clan on the one hand and then subsequently represented several parties against Adela in cases for forcible entry and recovery of possession and ownership, among others. In deciding that Atty. Evangelista was guilty of representing conflicting interests, the Court stated:

> The rule against conflict of interest also "prohibits a lawyer from representing new clients whose interests oppose those of a former

[123] *Id.*
[124] *Supra* note 120.
[125] *Id.,* citing Lim v. Villarosa, Adm. Case No. 5303, June 15, 2006.
[126] *Id.*
[127] Adm. Case No. 11829, February 26, 2018.
[128] The case contains the following statement, which points to a termination of the lawyer-client relationship between Atty. Evangelista and client Adela: "The IBP-CBD noted that Atty. Evangelista, who once lawyered for Adela, had accepted and handled legal actions against her."

> client in any manner, whether or not they are parties in the same action or on totally unrelated cases," since the representation of opposing clients, even in unrelated cases, "is tantamount to representing conflicting interests or, at the very least, invites suspicion of double-dealing which the Court cannot allow." The only exception is provided under Canon 15, Rule 15.03 of the CPR - if there is a written consent from all the parties after full disclosure. "Such prohibition is founded on principles of public policy and good taste as the nature of the lawyer-client relations is one of trust and confidence of the highest degree."[129]

The facts highlighted above together with the above quoted paragraph seemingly justify a conclusion that a lawyer cannot represent a client against a former client even in a totally unrelated case. However, tracing the sources of the statements contained in the paragraph, in particular the first statement, leads to the *Mabini Colleges v. Pajarillo*[130] and *Nuique v. Sedillo*[131] cases; the factual circumstances of which do not match *Romero.* In *Mabini Colleges*,[132] the lawyer represents a client against a former client in a related matter, while in *Nuique*,[133] the lawyer represented the new client against a party who was still his client at the time of his entry of appearance for the new client.

The confusion with respect to the treatment of totally unrelated matters was clarified once and for all in the case of *Parungao v. Lacuanan.*[134] In this case, Atty. Lacuanan was introduced to complainant Jonathan by the latter's wife. There was no standing retainer agreement between them, and

---

[129] *Supra* note 128, citing Mabini Colleges, Inc. represented by Marcel N. Lukban, et al. v. Atty. Pajarillo, 764 Phil. 352, 358 (2015), Atty. Nuique v. Atty. Sedillo, 715 Phil. 304, 315 (2013), Ylaya v. Atty. Gacott, 702 Phil. 390, 415 (2013) and Gonzales v. Cabucana, Jr., 515 Phil. 296, 304 (2006).
[130] Adm. Case No. 10687, July 22, 2015.
[131] Adm. Case No. 9906, July 29, 2013.
[132] *Supra* note 130.
[133] *Supra* note 131.
[134] *Supra* note 121.

Atty. Lacuanan intermittently represented Jonathan in several matters pertaining to the latter's business in 2011. These matters included the purchase of a lot from a bank and the drafting of a demand letter addressed to the seller of a vehicle Jonathan bought which turned out to be defective.[135] In 2013, after the termination of the lawyer-client relationship between Jonathan and Atty. Parungao, the lawyer represented Jonathan's wife in her criminal complaint for concubinage, physical injuries and threats against Jonathan. Jonathan filed a complaint for disbarment against Atty. Parungao for violating the prohibition on representing conflict of interest when he represented the wife against the husband who was his former client.

Since the attorney-client relationship between Jonathan and Atty. Parungao was already terminated prior to the latter taking on the wife's case against Jonathan, and since the new case is totally unrelated to the matters he handled for Jonathan, the Court held that there is no conflict of interest in this case:

> Of the three tests identified above, the third test - with references to "new relation," "former client," and "previous employment" - specifically applies to a situation wherein the professional engagement with the former client was already terminated when the lawyer entered into a new engagement with the present client. It bears to stress that this test explicitly requires the lawyer's use against his former client of "confidential information acquired through their connection or previous employment."
>
> The Court further categorically declared in *Palm v. Iledan, Jr.* that "[a] lawyer's immutable duty to a former client does not cover transactions that occurred beyond the lawyer's employment with the client. The intent of the law is to impose upon the lawyer the duty to protect the client's interests only on matters that he previously

[135] *Id.*

> handled for the former client and not for matters that arose after the lawyer-client relationship has terminated."
>
> Hence, for there to be conflicting interests when a former client is involved, the following circumstances must concur: (a) the lawyer is called upon in his present engagement to make use against a former client confidential information which was acquired through their connection or previous employment, and (b) the present engagement involves transactions that occurred during the lawyer's employment with the former client and matters that the lawyer previously handled for the said client.[136]

It was clarified in this case that it is the third test of conflict of interest that specifically applies where a former client and a new client are parties to a case. It also identified the prerequisites before a finding of conflict of interest can be made in case a lawyer represents a new client against a former client: (1) use in the new case of confidential information obtained from the former client, and (2) relation of the matter he is handling for the new client with that of his former client.

The principle adopted by the Court for situations of representation of a present client against a former client, as crystallized in the *Parungao* ruling, is one that seeks to balance the protection of the client's interest and the freedom of the lawyer to practice his or her profession, in particular in the representation of prospective clients. The ruling in the *Anglo* case was a step in keeping with the stricter direction and tendency that Rule 15.03 of the CPR embodied when it required the consent of the clients to be in written form. This would have meant, however, that lawyers will run afoul of the prohibition on representation of conflicting interests if they ever represent a client against a former client regardless of the extent of his engagement and the matters involved. It would have limited the options of the client with

[136] *Id.*

respect to available legal representation, while at the same time operating as a restriction on the lawyer's practice especially in an environment where clients employ multiple law firms on retainer.

V. APPLICATION OF CONFLICT OF INTEREST RULES

The prohibition in Rule 15.03 of the CPR on representation of conflicting interests is not only applicable to situations where there are two opposing parties, nor does it require an action pending before the courts between these parties. Conflict of interest has also been found even when the former client has already died, or the interest that conflicts with that of a client is that of the lawyer's and not another client.

In *Heirs of Falame v. Baguio*,[137] the lawyer was found guilty of violating the prohibition on representation of conflicting interests even though technically, he was not going against a former client, such former client being already dead during the time the lawyer took on the new case. In this case, it was held that while the lawyer never represented the heirs of his former client, these heirs derive their rights from such former client whose cause he previously defended. Even if the client is already dead, the lawyer was still duty- bound not to accept employment in a case where he will have to oppose the dead client's interest. The Court reiterated the doctrine that the termination of the attorney-client relation does not give the lawyer the license to act against his former client's interest in the same general matter.[138]

The conflict of interest rule has also been made to apply in situations where the interest that will conflict with the client's is that of the lawyer's and not another client's. In *Gamilla v. Mariño*,[139] Atty. Mariño represented the union members against UST in seeking compensation with respect

---

[137] Adm. Case No. 6876, March 7, 2008.
[138] *Id.*
[139] Adm. Case No. 4763, March 20, 2003.

to their illegal dismissal. However, aside from being their lawyer, Atty. Mariño was the union president and was himself an aggrieved member of the faculty and thus an interested party in the case. The Court held that "it is undoubtedly a conflict of interests for an attorney to put himself in a position where self-interest tempts, or worse, actually impels him to do less than his best for his client."[140] The Court stated:

> In the instant case, quite apart from the issue of validity of the 1990 compromise agreement, this Court finds fault in respondent's omission of that basic sense of fidelity to steer clear of situations that put his loyalty and devotion to his client, the faculty members of UST, open to question. Atty. Mariño both as lawyer and president of the union was duty bound to protect and advance the interest of union members and the bargaining unit above his own. This obligation was jeopardized when his personal interest as one of the dismissed employees of UST complicated the negotiation process and eventually resulted in the lopsided compromise agreement that rightly or wrongly brought money to him and the other dismissed union officers and directors, seemingly or otherwise at the expense of the faculty members.[141]

Similarly, in *Palalan Carp Farmers Multi-Purpose Coop v. Dela Rosa*,[142] the lawyer's conflict of interest stemmed not out of representing an adverse client in a court case but from the conflict of his interest with that of his client's. The Court agreed with the finding of the IBP Board of Governors that the root of the conflict of interest of the lawyer is that his interest to earn at once from the sale of the client's property

[140] *Id.*
[141] *Id.*
[142] Adm. Case No. 12008, August 14, 2019.

conflicted with the client's interest to effect a sale that will be most profitable to it.[143]

In *Foster v. Agtang*,[144] the Court found Atty. Agtang guilty of violating Rule 15.03 when he failed to fully protect his client's interests because the case in which he was representing the client questioned a document that he himself had notarized.[145] There was sufficient conflict of interests even if the validity of the document is not being put in question, but only the parties' intentions with respect to some of its provisions.[146]

Even if it is not the interests represented but the duties of the lawyer which are conflicting, Rule 15.03 was made to apply. In *Buehs v. Bacatan*,[147] the conflict in duties arose when, after rendering a decision as a voluntary arbitrator in an illegal dismissal case filed by Alvarez and Malukuh against Buehs, he indorsed a criminal complaint filed by Alvarez et al. against Buehs and signed it as counsel.[148] In finding that there was a violation of Rule 15.03 of the CPR, the Court held that it is not only the representation of conflicting interests of clients that is prohibited, but also the discharge of conflicting duties:

> [R]espondent was appointed as Voluntary Arbitrator for the parties in the illegal dismissal case. He took on the duty to act as a disinterested person to hear the parties' contentions and give judgment between them. However, instead of exhibiting neutrality and impartiality expected of an arbitrator, respondent indorsed a criminal complaint … for possible criminal prosecution against herein complainant, and signed the said Indorsement as counsel for complainants in the illegal dismissal case. The Court cannot accept the contention of

[143] *Id.*
[144] Adm. Case No. 10579, December 10, 2014.
[145] *Id.*
[146] *Id.*
[147] Adm. Case No. 6674, June 30, 2009.
[148] *Id.*

> respondent that the phrase "counsel for the complainants," found in the Indorsement, was a mere misprint… [as his] claim of misprint is a last futile attempt based on the clearly established evidence that he was acting in both capacities as counsel and arbitrator at the same time, an act which was clearly reprehensible and violative of the principle of conflict of interests.[149]

There is also conflict of interest even if the lawyer does not enter an appearance in the records for the adverse party. The act of participating in the preparation of the pleading of the party whose interest is adverse to that of his client's is sufficient for a finding of conflict of interest.[150] *Artezuela v. Maderazo*[151] held that:

To be guilty of representing conflicting interests, a counsel-of- record of one party need not also be counsel-of-record of the adverse party. He does not have to publicly hold himself as the counsel of the adverse party, nor make his efforts to advance the adverse party's conflicting interests of record---although these circumstances are the most obvious and satisfactory proof of the charge. It is enough that the counsel of one party had a hand in the preparation of the pleading of the other party, claiming adverse and conflicting interests with that of his original client. To require that he also be counsel-of-record of the adverse party would punish only the most obvious form of deceit and reward, with impunity, the highest form of disloyalty.[152]

In cases where a law firm represents a client, it has been held by the Court that a lawyer cannot represent an interest contrary to that previously espoused by his or her law firm.[153] Quoting *Hilado*, the Court said that "information obtained from a client by a member or assistant of a law firm is information imparted to the firm," because the information

[149] *Id.*
[150] Artezuela v. Maderazo, Adm. Case No. 4354, April 22, 2002.
[151] *Id.*
[152] *Id.*
[153] Ilusorio-Bildner v. Lokin, Adm. Case No. 6554, December 14, 2005.

obtained by the member or lawyer is available to the other lawyers in the firm.[154] Thus, the fact that the lawyer, while a member of the firm, did not personally handle the case does not excuse the lawyer from liability. The same conclusion was reached by the Court in Daging v. Davis.[155]

VI. EXCEPTION TO THE PROHIBITION

The prohibition is not absolute, whether under the CPE or the CPR. Together with the development of the rule, the exception to its applicability was also refined and made stricter. Prior to the CPE, jurisprudence provided that a lawyer may act for and on behalf of both parties without danger of being found guilty of malpractice as long as such dual representation was with the knowledge and consent of both parties, because the parties were not deceived thereby.[156]

Under paragraph 2, Canon 6 of the CPE, the prohibition will not apply if the lawyer secured the "express consent of all concerned given after a full disclosure of the facts". The CPR imposed a stricter requirement[157] for the exception to apply, since what is required under Rule 15.03 is for a lawyer not to represent conflicting interests "except by written consent of all concerned given after a full disclosure of the facts." It is not enough that the clients are aware of the lawyer's representation of the two opposing parties, nor that the client consented to the representation in some way. The consent is required to be in writing.

Hence, in *Ocampo-Ingcoco v. Yrreverre*,[158] Atty. Yrreverre was not held liable for representing conflicting interests because he was able to obtain the consent and written conformity of the client after full disclosure of the facts. But in *Quiambao v. Bamba*,[159] Atty. Bamba's defense

[154] *Id.*
[155] Adm. Case No. 9395, November 12, 2014.
[156] In re De la Rosa, 27 Phil. 258, March 21, 1914.
[157] Buted v. Hernando, Adm. Case No. 1359, October 17, 1991.
[158] Adm. Case No. 5480, September 29, 2003.
[159] Adm. Case No. 6708, August 25, 2005.

that his client consented to his representation of the other party was unavailing because the lawyer failed to show full disclosure of the facts to both clients and to present their written consent.[160] A claim of express consent by the client is not sufficient for the exception to apply. In *Aniñon v. Sabitsana*,[161] the Court did not apply the exception in Atty. Sabitsana's favor because, while he wrote the former client about the adverse claim of his present client, he did not disclose to the said former client his engagement as counsel of the new client. He was also unable to obtain the written consent of both clients. In *Palacios v. Amora*,[162] the Court strictly applied the written consent requirement. Atty. Amora in the said case sought to be exonerated from liability for violation of Rule 15.03 by claiming that he obtained the written consent of the client as evidenced by its approval of several transactions between him and the other client. However, the Court held that this purported approval is not the consent required by the CPR.[163] Likewise, in *Capinpin v. Cesa*,[164] the client's supposed knowledge of the negotiation that Atty. Cesa was undertaking with the other party is not sufficient to exonerate him from the charge of representing conflicting interests since there was no written consent from his client acquiescing to such negotiation.

The written consent after a full disclosure of facts exception is the only exception recognized by the Court. Thus, the defense that the conflict of interests is "remote or merely probable" is not accepted.[165] Nor is the defense of good faith sufficient to exonerate: Even when Atty. Ramos claimed that his appearance for the other party is only a friendly accommodation;[166] or that Atty. Cabucana could not turn down the other party because there was no other lawyer willing to take their case;[167] or that Atty. Sanchez had honest

[160] *Id.*
[161] Adm. Case No. 5098, April 11, 2012.
[162] Adm. Case No. 11504, August 01, 2017.
[163] *Id.*
[164] Adm. Case No. 6933, July 05, 2017.
[165] Pormento vs. Pontevedra, Adm. Case No. 5128, March 31, 2005; Heirs of Falame v. Baguio, Adm. Case No. 6876, March 7, 2008.
[166] Orola v. Ramos, Adm. Case No. 9860, September 11, 2013.
[167] Gonzales v. Cabucana, Adm. Case No. 6836, January 23, 2006.

intentions in taking on the case;[168] they were still found guilty of violating Rule 15.03.

Even if the lawyer subsequently withdrew as counsel for the case, he was still found guilty of representing conflicting interests, as the mere filing of the complaint is already considered a manifestation of his disloyalty and infidelity to his former client.[169] Lack of opposition to the representation of the other client is also not considered a sufficient ground to free the lawyer from liability under Rule 15.03, since he is guilty of violating his oath as long as he represents conflicting interests of his clients.[170] The lack of monetary consideration for the professional service rendered was also not an acceptable excuse,[171] nor did the takeover by another lawyer of a case meant that the lawyer became free to represent the opposing party.[172]

VII. THE CPR VIS-À-VIS THE AMERICAN MODEL RULES OF PROFESSIONAL CONDUCT

Since the Philippines initially adopted the legal ethics rules of the United States before coming up with its own Code of Professional Responsibility, it is interesting to see whether our rule deviated from the direction that the US rules eventually took. After the US adopted the Canons of Professional Ethics in 1908, it adopted the 1969 Model Code of Professional Responsibility before coming up with the ABA Model Rules of Professional Conduct in 1983 (ABA Model Rules), which "serve as models for the ethics rules of most jurisdictions."[173]

[168] Paz v. Sanchez, Adm. Case No. 6125, September 19, 2006.
[169] Tulio v. Buhangin, Adm. Case No. 7110, April 20, 2016.
[170] San Jose Homeowners Association Inc. v. Romanillos, Adm. Case No. 5580, June 15, 2005; also Tan-Te Seng v. Pangan, Adm. Case No. 12829 and Adm. Case No. 12830, September 16, 2020.
[171] Castro-Justo v. Galing, Adm. Case No. 6174, November 16, 2011.
[172] *Id.*
[173] https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct

Whereas Rule 15.03 of the CPR contains a general statement of the prohibition, one that is even shorter than its predecessor from the CPE, the model codes adopted by the ABA contain more specific prohibitions and statements which have been tailored to apply to particular situations. The ABA Model Rules deal with conflict of interest in Rule 1.7 (Conflict of Interest: Current Clients), Rule 1.8 (Current Clients: Specific Rules), Rule 1.9 (Duties to Former Clients), Rule 1.10 (Imputation of Conflicts of Interest: General Rule), Rule 1.11 (Special Conflicts of Interest for Former and Current Government Officers and Employees), Rule 1.12 (Former Judge, Arbitrator, Mediator or Other Third- Party Neutral), and Rule 1.13 (Organization as Client).

Despite the lack of specificity of the rule embodied in the CPR compared to the ABA Model Rules, however, Philippine jurisprudence on conflict of interest has been able to adapt to the times and to cover situations and circumstances contemplated in the ABA Model Rules. These include decisions where the lawyer was found guilty of conflict of interest when the lawyer's personal interest conflicted with that of the client's,[174] or where the lawyer was an arbitrator who later filed a criminal case as counsel against one of the parties to the arbitration.[175] Moreover, even

---

[174] Gamilla v. Marino, Adm. Case No. 4763, March 20, 2003, and Palalan Carp Farmers Multi-Purpose Coop v. Dela Rosa, Adm. Case No. 12008, August 14, 2019, may be covered by Rule 1.7 (a) (2) of the ABA Model Rules of Professional Conduct, which states:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

[175] Buehs v. Bacatan, Adm. Case No. 6674, June 30, 2009, which may covered by Rule 1.12 (a) of the ABA Model Rules of Professional Conduct:

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all

if the CPR does not explicitly set out the rules for the application of conflict of interest to representing a present client against a former client as Rule 1.9 of the ABA Model Rules does,[176] the rule is even entrenched in jurisprudence as the third test of conflict of interest.[177] Where the CPR and jurisprudence deviate from the ABA Model Rules is the qualification therein that the opposing interest must be directly or materially adverse in order for the conflict of interest rule to apply,[178] since it has been repeatedly held by

parties to the proceeding give informed consent, confirmed in writing.

[176] Rule 1.9: Duties to Former Clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interest of the former client unless the former client gives informed consent, confirmed in writing.

[177] Parungao v. Lacuanan, Adm. Case No. 12071, March 11, 2020.

[178] As shown in the following rules:

Rule 1.7 (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

Rule 1.9 (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

the Court that the rule applies "even if the inconsistency is remote or merely probable."[179]

Thus, it appears that, for now, the CPR is capable of being interpreted to cover situations contemplated in the ABA Model Rules. Even without the rules particularly tailored for such situations, the Court has been able to determine a lawyer's liability for conflict of interest applying Rule 15.03 of the CPR and using jurisprudence as its guide. It has been pointed out, however, that the CPR has remained fixated in the classical view of lawyering as adversarial in nature[180] and that other areas of law practice, such as corporate practice, are not specifically addressed by it due to its focus on litigation.[181]

On this score, a re-examination of the rule may be in order to come up with rules that may address conflict of interest issues in this particular area of practice.

VIII. CONCLUSION

The conflict of interest rule in the Philippine legal system has been steady and consistent over the years. The developments in the rule itself and its application have tended to build and expand on the existing principles, rather than introduce drastic changes. This can be seen not just in the transition from Canon 6 of the CPE which was adopted from the ABA CPE to Rule 15.03 of the CPR, but also in the development of jurisprudence, from the first test of conflict of interest enunciated in *Hilado v. David*[182] to the three tests

[179] Orola v. Ramos, Adm. Case No. 9860, September 11, 2013; Tulio v Buhangin, Adm. Case No. 7110, April 20, 2016; Tan-Te Seng v. Pangan, Adm. Case No. 12829 and Adm. Case No. 12830, September 16, 2020; Pormento v. Pontevedra, Adm. Case No. 5128, March 31, 2005; Heirs of Falame v. Baguio, Adm. Case No. 6876, March 7, 2008, to name a few.
[180] Leandro Angelo Y. Aguirre, *From Courtroom to Boardroom: Evolving Conflict of Interest Rules to Govern the Corporate Practice of Law,* 81 PHIL. L.J. 292 (2006).
[181] Maria Carmen L. Jardeleza, *Shotgun versus Top Gun: Confidentiality and the Filipino In-House Counsel*, 83 PHIL. L.J. 95, 129 (2008).
[182] G.R. No. L-961, September 21, 1949.

in *Quiambao v. Bamba*[183] currently being used today. The preservation of the client's trust and confidence in the lawyer was and remains a paramount consideration in applying the rule.[184]

While the rule has remained unchanged for more than thirty years, its interpretation has not been stagnant and has been shown to be capable of adapting to the circumstances and situations experienced by the modern lawyer. Where once the rule was applied only to situations where the lawyer represents clients who are opposing parties in the same case or related cases, jurisprudence eventually covered within the prohibition the situation where a lawyer represents present clients against each other in totally unrelated cases.[185]

The conflict of interest rule is interpreted strictly, as evidenced by cases where it was also applied even in situations where the former client has already died, or there is no attorney-client relationship with the second client, or where the interest that conflicts with the client's interest is the lawyer's. The exception to the prohibition, the consent of all parties concerned, is also strict since it is required to be written, and is the only exception allowed by the Court. The lack of consent in the required form does not exempt the lawyer from liability. Defenses such as good faith, lack of intention to represent conflicting interests, lack of monetary consideration for the lawyer's appearance, and lack of opposition by the client to the lawyer's representation of the opposing party have all been held as unavailing.

While a re-examination or a revision of the CPR for purposes of keeping up with the increasing complexities and intricacies of modern law practice, may be in order, the conflict of interest rule has shown itself to be adaptable.

---

[183] Adm. Case No. 6708, August 25, 2005.
[184] Aniñon v. Sabitsana, Adm. Case No. 5098, April 11, 2012.
[185] Lim-Santiago v. Sagucio, Adm. Case No. 6705, March 31, 2006.

PROTECTING TOMORROW'S HOPE TODAY: THE PHILIPPINE LEGAL PERSPECTIVE FROM THE TENDER-AGE PRESUMPTION TO SHARED PARENTING[*]

Jose Mari Benjamin Francisco U. Tirol[**]

Abstract

Philippine private law promotes the rights and interests of children. It emphasizes that their welfare is paramount in all questions relating to their care, custody, education, and property and enumerates the duties and obligations of parents to safeguard and protect them by ensuring their moral and mental development.

However, the Philippines has no law which provides for or recognizes shared parenting. Neither is there any law which recognizes divorce, civil partnerships, or same-sex marriages. As a result, there is no express rule which specifically applies to the children of such relationships.

Nevertheless, the absence of any Philippine law on divorce, same-sex relationships, civil partnerships, or shared parenting does not mean that the Philippine legal framework has not

[*] This is an update from the author's inaugural message at the International Scientific Conference on Best Interest of the Child and Shared Parenting in Málaga, Spain on December 2-3, 2019 organized by the International Council on Shared Parenting and the Facultad de Derecho, Universidad de Málaga (https://www.uma.es/spanish-philippine-law-archive/navegador_de_ficheros/Congress-2019/descargar/Program-SP-Congress.pdf).

[**] Dean and Professor, University of San Agustin College of Law, Iloilo City. Bachelor of Arts (History), UP Miag-ao (1994), Bachelor of Laws *cum laude* University of San Agustin (1998), Master of Laws *cum laude* University of Santo Tomas (2004).

considered, and does not protect the best interests of the children of these and all other relationships. But this should not stop us from looking for other ways to further enhance the protections that our children are legally entitled to.

Since Philippine private law is based on the Spanish Civil Code, their legal commonalities and shared histories should be more than enough impetus for Philippine lawmakers and policymakers to look into Spanish law, for the purpose of further enhancing and protecting the best interests of the Filipino child.

I. SPANISH ORIGINS OF PHILIPPINE PRIVATE LAW

Jose Rizal, whose bust can be located along the Paseo Marítimo in Málaga, Spain, was born in the Philippines at the tail end of the Spanish colonial period. At the age of 18 Rizal wrote "*A la juventud filipina*" (To the Filipino youth) even though at that time the term "Filipino" referred to Spaniards born in the Philippine Islands. This could only mean he imagined and foresaw a community composed of his countrymen. In his poem, he called the Filipino youth "*bella esperanza de la patria mia*" – the beautiful hope of (his) fatherland.

In a sense, Rizal's "*A la juventud filipina*" predicted the origins of Philippine private law, from which these safeguards sprung from: The Spanish Civil Code of 1889, which by royal decree of July 31, 1889 was extended to Cuba, Puerto Rico, and the Philippines,[1] and took effect on December 18, 1889.

[1] Its Articles 42 to 107 did not take effect in the Philippines, having been suspended by the Governor General shortly after the Code was extended in the country (Balogbog v. Court of Appeals GR No. 83598 March 7, 1997).

Spanish hegemony over the Philippines ended in 1898, replaced by the Americans who ruled until 1946 (with a short period of Japanese occupation from 1941-1945). While the Americans introduced the common law doctrine of *stare decisis* and discarded all Spanish laws, customs, and rights of property that were inconsistent with the US Constitution and American principles,[2] they retained the Spanish Civil Code of 1889.

The venerable[3] Spanish Civil Code of 1889, which is now referred to as the Old Civil Code, was in force in the Philippines from December 8, 1889 up until the day prior to August 30, 1950 when Republic Act 386 or the New Civil Code took effect.[4] Nevertheless, the Old Civil Code was the primary source of the New Civil Code[5] with 53% of the latter being textually lifted from the former.[6]

Despite Philippine private law being historically rooted in Spanish private law, their paths have long since diverged especially in the promotion and protection children's needs and interests. For example, Spanish law[7] and the laws of certain autonomous communities in Spain[8] now recognize

---

[2] In re Application of Max Shoop for admission to practice law, November 29, 1920.

[3] A word used by the Court to describe the Spanish Civil Code in Philippine National Bank v. Court of Appeals GR No. 97995 January 21, 1993.

[4] Tecson v. Commission on Elections, GR No. 161434, March 3, 2004. Capitle v. Gaban GR No. 146890 June 8, 2004. Its repealing clause provides: "Art. 2270. The following laws and regulations are hereby repealed: (1) Those parts and provisions of the Civil Code of 1889 which are in force on the date when this new Civil Code becomes effective; …" Nonetheless, the provisions of the Old Civil Code would apply if the factual circumstances occurred during its effectivity (Balilo-Montero v. Septimo GR No. 149751 March 11, 2005; Ko v. Aramburo GR No. 190995 August 9, 2017).

[5] Tecson v. Commission on Elections, supra.

[6] Agabin, Pacifico A. 2016. Mestizo: The Story of the Philippine Legal System. Quezon City: University of the Philippines College of Law. p. 116.

[7] Spanish Civil Code, Articles 9(2), 44, 85-107; Ley 2/2003 (*Reguladora de las parejas de hecho*).

[8] For example, Ley 5/2015 (*Derecho Civil Vasco*) and Ley 7/2015 (*De relaciones familiares en supuestos de separación o ruptura de los*

divorce, same-sex marriages, civil partnerships, and shared parenting—the same relationships that directly affect the rights of children. Today, there is an apparent absence of any Philippine law which specifically applies to such relationships. However, as will be discussed in this article, the same is not proof that the Philippine legal framework has not considered the best interests of the children born out of these and all other relationships.

The Spanish origins of Philippine private law impel us to rediscover how they have developed over the years. This will enable us to appreciate our legal history and determine the possible ways that the legal protections deservingly afforded to our children can be further enhanced.

II. COMPLIANCE WITH INTERNATIONAL AND REGIONAL NORMS

Both the Philippines and Spain ratified the United Nations Convention on the Rights of the Child (1989) which, among others, recognizes that the best interests of the child shall be the primary consideration in all actions concerning them. Notably, it also respects the right of a child, separated from one or both parents, to maintain personal relations and direct contact with both parents on a regular basis – unless this is contrary to the child's best interests.

> The inadequacies of the sole custody model at respecting this right and a changing social context in which fathers are generally more actively involved in the care and upbringing of their children has led to the emergence of a shared custody model in a number of jurisdictions, this model permits both parents to exercise parental care together after a divorce or separation and is an arrangement by which a child divides his time between two adults… who

progenitores).

are no longer living together.[9]

While both countries are members of the Hague Conference on Private International Law, only Spain is a contracting party to the Hague Convention on Parental Responsibility and Protection of Children (1996),[10] which took into account the UN Convention on the Rights of the Child. The Convention emphasized the best interests of the child in international situations "to avoid conflicts between their legal systems in respect of jurisdiction, applicable law, recognition and enforcement of measures for the protection of children."

Moreover, as a member of the European Union (EU), Spain is also covered by the Treaty on European Union (2012). Article 3 of the Treaty requires the Union to protect the rights of the child. Even Article 24 of the EU Charter of Fundamental Rights (2012) acknowledges that children are independent and autonomous holders of rights and have all the right to such protection and care as is necessary for their well-being. It specifically mandates that their views shall be taken consideration on matters which concern them, that their best interest must be a primary consideration in all action relating to them, and that their right to maintain a personal relationship and direct contact with both parents is paramount, unless the same is contrary to his interests.

Regarding the Philippines' membership in the Association of Southeast Asian Nations (ASEAN), the Institute of Human Rights and Peace Studies of Mahidol University, Thailand noted that the principle of the best interest of the child under the UN Convention on the Rights of the Child is not consistently applied in practice in ASEAN due to challenges in reconciling the region's traditional culture with

[9] Hayden, Andrea. Shared Custody: *A Comparative Study of the Position in Spain and England.* 2011. Accessed November 29, 2019. https://indret.com/wp-content/themes/indret/pdf/795_en.pdf.

[10] Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect to Parental Responsibility and Measures for the Protection of Children.

child rights.[11] For instance, in a 2019 report[12] jointly published by ASEAN and the UNICEF East Asia and Pacific Regional Office, the rights of children were focused on health, nutrition, water, sanitation, hygiene, and protection. Nonetheless, the Council of ASEAN Chief Justices (CACJ) during its 7th Meeting in November 2019 in Bangkok, promulgated the Bangkok Declaration[13] which acknowledged that the Working Group on Cross-Border Disputes Involving Children (led by Singapore and the Philippines) has, on top of enhancing the procedure for cross-border dispute involving children within the ASEAN, agreed for the Working Group to "discuss and consider developing a common set of values, aspirations and principles for ASEAN Judiciaries in cases of cross-border disputes within ASEAN".

III. SHARED PARENTING: A SPANISH OVERVIEW

The relevant provisions of the Spanish Civil Code regarding shared parenting as reproduced as follows:

Article 92

1. Separation, annulment and divorce shall not exonerate parents from their obligations to their children.
2. When the Judge is to adopt any measure relating to custody, care and education of underage children, he shall ensure compliance with their right to be heard.

---

[11] Institute of Human Rights and Peace Studies. Mahidol University, Thailand. 2016. Child Rights Situation Analysis within the ASEAN Region. Accessed December 17, 2019, https://www.crcasia.org/wp-content/uploads/2016/11/Child-Rights-Situation-Analysis-Within-the-ASEAN-Region_Mahidol-University-2016.pdf.

[12] Association of Southeast Asian Nations and UNICEF East Asia and Pacific Regional Office. Children in ASEAN: 30 Years of the Convention of the Rights of the Child 2019. Accessed December 17, 2019, https://www.unicef.org/eap/media/4281/file/Children%20in%20ASEAN.pdf.

[13] Council of ASEAN Chief Justices (CACJ). Bangkok Declaration at the 7th Council of ASEAN Chief Justices Meeting. 2019. Accessed December 17, 2019, https://cacj-ajp.org/bangkok-declaration.

3. The judgment shall order the deprivation of parental authority when grounds for this should be revealed in the proceedings.
4. The parents may agree in the settlement agreement, or the Judge may decide, for the benefit of the children, that parental authority be exercised in whole or in part by one of the spouses.
5. Shared care and custody of the children shall be decreed where the parents should request it in the settlement agreement proposal or where both of them should agree during the proceedings. The Judge, in decreeing joint custody and after duly motivating his resolution, shall adopt the necessary precautions for the effective compliance of the agreed custody regime, trying not to separate siblings.
6. In any event, after decreeing the care and custody regime, the Judge must ask the opinion of the Public Prosecutor and hear minors who have sufficient judgment, where this is deemed necessary ex officio or at the request of the Public Prosecutor, the parties or members of the Court Technical Team, or the minor himself, and evaluate the parties' allegations at the hearing and the evidence practiced therein, and the relationship between the parents themselves and with their children to determine the suitability of the custody regime.
7. No joint custody shall be granted when either parent should be subject to criminal proceedings as a result of an attempt against the life, physical integrity, freedom, moral integrity or sexual liberty and integrity of the other spouse or the children who live with both of them. Neither shall it apply where the Judge should observe, from the parties' allegations and the evidence practiced, that there is well-founded circumstantial evidence

of domestic violence.

8. Exceptionally, even when the circumstances described in section five of this article do not arise, the judge, at the request of one of the parties, with a favourable report from the public prosecutor's office, may award shared care and custody, on the basis that only in that way are the best interests of the minor adequately protected.
9. The Judge, before adopting any of the decisions mentioned in the preceding paragraphs, ex officio or ex parte, may ask for the opinion of duly qualified specialists relating to the suitability of the form of exercise of parental authority and the minors' custody regime.

<u>Article 110</u>
The father and mother, even if they do not hold parental authority, are obliged to care for their underaged children and to provide them with support.

<u>Article 154</u>
Non-emancipated children shall be under the parents' parental authority.
Parental authority shall be exercised always for the benefit of the children, according to their personality, and respecting their physical and psychological integrity.

This authority comprises the following duties and powers:

1. To look after them, to have them in their company, feed them, educate them and provide them with a comprehensive upbringing.
2. To represent them and to manage their property.

If the children should have sufficient judgment,

they must be heard always before adopting decisions that affect them.

Parents may, in the exercise of their powers, request the assistance of the authorities.

Article 156
Parental authority shall be exercised jointly by both parents, or by one of them with the express or implied consent of the other. Acts performed by one of them according to social practice and circumstances or in situations of urgent need shall be valid.

In the event of disagreement, either of them may appear before the Judge, who, after hearing both of them and the child, if he should have sufficient judgment and, as the case may be, if he should be older than twelve, shall confer without further recourse the ability to decide to the father or the mother. In the event of repeated disagreement, if there should be any other cause which severely hinders the exercise of parental authority, he may confer it in whole or in part to one of the parents, or distribute duties between them. This measure shall remain in force during the period provided, which may never exceed two years.

In the cases provided in the preceding paragraphs, in respect of third parties in good faith, each parent shall be presumed to act in the ordinary exercise of parental authority with the consent of the other.
In the absence thereof, or as a result of the absence, incapacity or impossibility of one of the parents, parental authority shall be exclusively exercised by the other.

If the parents should live separately, parental authority shall be exercised by the parent with

> whom the child lives. Notwithstanding the foregoing, the Judge, at the duly justified request of the other parent, may, in the interests of the child, confer parental authority to the applicant, to be exercised jointly with the other parent, or distribute between the father and the mother the duties inherent to its exercise.
>
> Article 159
> If the parents live separately and are unable to decide by common consent, the Judge shall decide, always for the benefit of the children, in the custody of which parent the underage children are to remain. The Judge, before taking this measure, shall hear the children who have sufficient judgment and, in any event, those older than twelve.

The argument that shared custody is detrimental to the child's best interests due to the lack of stability for the child is neither a fundamental nor a decisive reason to deny the same.[14]

> …[s]tability is no longer interpreted to mean that a child should not be moved from one household to another – of course some conditions are required – but it is conceived as ensuring that emotional stability can be offered to the child if both parents agree and can maintain a minimum of harmony to deal with this system of caring for a child.
>
> However, despite a so called "new interpretation", there continue to be cases particularly in the ordinary courts, in which judges reject shared custody as something that does not provide a stable environment for a child. In response to this, the Supreme Court of Spain is now endeavouring to educate the lower

[14] Hayden, supra.

courts about the positive values of shared custody.

Indeed the Supreme Court Judgments of 10.3.2010 and 11.3.2010 reaffirmed the sentiment that instability (in the sense of not providing one stable home for the child) is not a permissible criterion for refusing to award shared custody. In coming to this conclusion the Court referred to the Supreme Court's decision of 8.10.2009, which recognized the difficulties facing Spanish judges who are obliged under a general clause (Article 90 II CC) to award shared custody always in the best interests of the child. The Supreme Court explained that since Spanish law does not
provide a list of legal criteria in order to determine the best interests of the child it is very difficult to specify the requirements contained under this obligation. In looking for guidance, the Court turned to the study of comparative law and considered criteria being used in other jurisdictions such as France (French Civil Code), England (CA 1989) and America (American Law Institute Principles of the Law of Family Dissolution) in order to decide on the convenience or otherwise of a shared custody arrangement…[15]

IV. CHILD CUSTODY AND PARENTAL AUTHORITY: A PHILIPPINE OVERVIEW

As early as 1932, the Philippine Supreme Court in Perkins v. Perkins[16] recognized that in matters involving the custody of minors, their welfare is the controlling consideration. But apparently not because of the tender-age

[15] Id.
[16] GR No. 35698, September 12, 1932.

presumption, as explained by Justices Malcom and Imperial in their dissent which gave much weight to the child's choice of parent:

> According to section 771 of the Code of Civil Procedure, when husband and wife are living separate and apart from each other, and the question as to the care, custody, and control of the offspring of their marriage is brought before a Court of First Instance, the father and mother of such offspring shall stand upon an equality. In this case, therefore, the plaintiff and the defendant have no advantage over the other…

However, the New Civil Code in Article 363 now provides for the tender-age presumption and emphasizes that their welfare of is paramount in all questions relating to their care, custody, education, and property. These are further strengthened by the Child and Youth Welfare Code (Presidential Decree 603 – 1974). The following articles are evidence of the same: Article 1 recognizes the "natural right and duty of parents in the rearing of the child for civic efficiency," with the best interest of the child as the overriding factor, Article 8 echoes the New Civil Code's Article 363, Article 3 enumerates the rights of the child "without distinction as to legitimacy or illegitimacy … and other factors," and Article 1 recognizes the "natural right and duty of parents in the rearing of the child for civic efficiency."

Most of the New Civil Code's provisions on persons and family relations were superseded in 1988 by the Family Code of the Philippines (Executive Order 209). Article 213 reiterates the tender-age presumption, Article 209 states that from the status of being a parent flows one's "natural right and duty not only of the "caring for" and the "rearing of" one's unemancipated children but above all "the development of their moral, mental, and physical character and well-being,"" and its Article 220 enumerates the additional duties and obligations of parents to safeguard and protect their children

by ensuring their moral and mental development.[17]

Furthermore, Articles 216-219 of the Family Code provide for a system of substitute parental authority in default of parents or a judicially appointed guardian, and for special parental authority by schools, their administrators and teachers whenever the minor child is under their supervision, instruction, or custody.

The Family Code itself has been amended and supplemented by laws which emphasize the best interest of the child. Among these are the following adoption laws: Republic Act 8043 (the Intercountry Adoption Law - 1995), Republic Act 8552 (the Domestic Adoption Law - 1998), Republic Act 9523 (the law amending Republic Acts 8043 and 8442 and Presidential Decree 603 which requires a certification from the DSWD to declare a "child legally available for adoption" - 2009), and Republic Act 11222 (the Simulated Birth Rectification Act - 2019).

Following the example set by the Family Code, other laws were subsequently passed emphasizing the protection of children: Among others, the law against child abuse (Republic Act 7610 - 1992), the Anti-Violence Against Women and their Children Act (Republic Act 9262 - 2004), the Solo Parent's Welfare Act (Republic Act 8972 - 2000) which provides benefits to solo parents and their children, the Foster Care Act (Republic Act 10165 - 2012) which highlights the best interests of the child and guarantees his rights under Article 3 of Presidential Decree 603 and the United Nations Convention on the Rights of the Child which the Philippines is a party to, and the Early Years Act (EYA) (Republic Act 10410 - 2013), which promotes the rights of children to survival, development, and special protection, and to support parents in their roles as primary caregivers and as their children's first teachers.

Despite these numerous progressive legislation, there is still no law in the Philippines which specifically applies to

[17] Kalaw v. Fernandez GR No. 166357 January 14, 2015.

children of divorced parents. While there were periods in Philippine history when divorce was allowed,[18] the Philippines does not recognize divorce, except in two limited instances: (1) When both parties are Muslims,[19] or (2) when one of the parties is a foreigner[20].

In fact, even when the number of registered marriages in the Philippines has been decreasing and the percentage of nonmarital unions has been increasing (from 14.% in 2013 to 18% as of the year 2017)[21], the Philippines still does not legally recognize civil partnerships[22] as well as same-sex

---

[18] Although there were divorce laws during the American and Japanese periods and have been and are proposals to pass a law to revive the same. Said the Supreme Court in Republic v. Manalo GR No. 221029 April 24, 2018: "Notably, a law on absolute divorce is not new in our country. Effective March 11, 1917, Philippine courts could grant an absolute divorce on the grounds of adultery on the part of the wife or concubinage on the part of the husband by virtue of Act No. 2710 of the Philippine Legislature. On March 25, 1943, pursuant to the authority conferred upon him by the Commander-in-Chief of the Imperial Japanese Forces in the Philippines and with the approval of the latter, the Chairman of the Philippine Executive Commission promulgated an E.O. No. 141 ("New Divorce Law"), which repealed Act No. 2710 and provided eleven grounds for absolute divorce, such as intentional or unjustified desertion continuously for at least one year prior to the filing of the action, slander by deed or gross insult by one spouse against the other to such an extent as to make further living together impracticable, and a spouse's incurable insanity. When the Philippines was liberated and the Commonwealth Government was restored, it ceased to have force and effect and Act No. 2710 again prevailed. From August 30, 1950, upon the effectivity of Republic Act No. 386 or the New Civil Code, an absolute divorce obtained by Filipino citizens, whether here or abroad, is no longer recognized.

[19] Muslim Code of Personal Laws of the Philippines, Presidential Decree 1083 (1977).

[20] Article 26 of the Family Code, as most recently applied in Kondo v. Civil Registrar General GR No. 223628 March 4, 2020.

[21] Philippine Statistics Authority (PSA) [Philippines], and ICF International. Philippines National Demographic and Health Survey 2013. Manila, Philippines, and Rockville, Maryland, USA: PSA and ICF International. Accessed December 20, 2019, https://dhsprogram.com/pubs/pdf/FR294/FR294.pdf; Philippines National Demographic and Health Survey 2017. Quezon City, Philippines, and Rockville, Maryland, USA: PSA and ICF. Accessed December 20, 2019, https://dhsprogram.com/pubs/pdf/FR347/FR347.pdf.

[22] There have been attempts to pass laws for these purposes, among

marriages. Thus it does not have any law which specifically applies to the children of such relationships. Nor does it have a law which expressly provides for or recognizes shared parenting,[23] where children are brought up with the love and guidance of both parents following a separation.

The tender-age presumption

Article 211 of the Family Code establishes the general rule that the father and the mother shall jointly exercise parental authority over the persons of their common children, but "in case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary."[24] The father's decision, unless overturned in court, enjoys the

---

them House Bill 6595, "An Act Recognizing the Civil Partnership of Couples, Providing for their Rights and Obligations" (October 2017) but these have not succeeded. The Family Code in Articles 147 and 148 (Property Regimes of Unions Without Marriage) provides for how the assets acquired by these parties (who must be of opposite sexes) will be divided at the end of their cohabitation, but does not regulate their relationship during its subsistence. Neither do these apply to same-sex relationships.

[23] Two laws which established an autonomous region in northern Philippines encouraged shared parenting - Republic Act 6766 (Providing for an Organic Act for the Cordillera Autonomous Region – 1989) provides in Article XVI (Social Justice and Welfare) Section 9 thereof: "The Regional Government shall promote a harmonious balance between women's personal, family and work obligations and their participation in public life. Shared parenting and homemaking responsibilities between spouses shall be encouraged." Article XI (Social Justice and Welfare), Section 9 of Republic Act 8438 (An Act to Establish the Cordillera Autonomous Region – 1997) contains a similar provision. However the Cordillera Autonomous Region did not come to be, because the majority of the voters in the proposed region rejected autonomy.

[24] The Family Code has other provisions where it is primarily the father who exercises parental authority over legitimate children: Articles 14 and 78 provides that a person between the ages of 18-21 must secure parental consent in order to marry and enter into a marriage settlement/prenuptial agreement. And under Article 96 on the administration and enjoyment of community property, Article 124 on the administration and enjoyment of the conjugal partnership, and Article 225 on the guardianship over the property of unemancipated children, it is also the father's decision which shall prevail unless there is a judicial order to the contrary.

presumption that it is for the child's best interest.[25]

In Santos Sr. v. Court of Appeals (1995),[26] the Supreme Court explained the interplay between joint parental authority and the father's primacy in Article 211 when it granted the plea of the petitioner husband estranged from his wife to obtain custody of their son who was with his maternal grandparents:

> Parental authority and responsibility are inalienable and may not be transferred or renounced except in cases authorized by law. The right attached to parental authority, being purely personal, the law allows a waiver of parental authority only in cases of adoption, guardianship and surrender to a children's home or an orphan institution. When a parent entrusts the custody of a minor to another, such as a friend or godfather, even in a document, what is given is merely temporary custody and it does not constitute a renunciation of parental authority. Even if a definite renunciation is manifest, the law still disallows the same.
>
> xxx
>
> The law vests on the father and mother joint parental authority over the persons of their common children. In case of absence or death of either parent, the parent present shall continue exercising parental authority. Only in case of the parents' death, absence or unsuitability may substitute parental authority be exercised by the surviving grandparent. The situation obtaining in the case at bench is one where the mother of the minor Santos, Jr., is working in the United States while the father, petitioner Santos, Sr., is

[25] Sta. Maria, Melencio. 2015. Persons and Family Relations Law. Quezon City: Rex Bookstore. p. 831.

[26] GR No. 113054 March 16, 1995.

> present. Not only are they physically apart but are also emotionally separated. There has been no decree of legal separation and petitioner's attempt to obtain an annulment of the marriage on the ground of psychological incapacity of his wife has failed.
>
> xxx
>
> We find the aforementioned considerations insufficient to defeat petitioner's parental authority and the concomitant right to have custody over the minor Leouel Santos, Jr., particularly since he has not been shown to be an unsuitable and unfit parent. Private respondents' demonstrated love and affection for the boy, notwithstanding, the legitimate father is still preferred over the grandparents…

Notwithstanding the seemingly patriarchal bias of the Family Code, its Article 213[27] reiterates the tender-age presumption under Article 363 of the New Civil Code[28], the

[27] Art. 213. In case of separation of the parents, parental authority shall be exercised by the parent designated by the Court. The Court shall take into account all relevant considerations, especially the choice of the child over seven years of age, unless the parent chosen is unfit.

No child under seven years of age shall be separated from the mother, unless the court finds compelling reasons to order otherwise.

[28] Rule 99, section 6 (Adoption and Custody of Minors) of the Rules on Special Proceedings contains a similar provision:

"SEC. 6. Proceedings as to child whose parents are separated. Appeal. — When husband and wife are divorced or living separately and apart from each other, and the questions as to the care, custody, and control of a child or children of their marriage is brought before a Court of First Instance by petition or as an incident to any other proceeding, the court, upon hearing the testimony as may be pertinent, shall award the care, custody, and control of each such child as will be for its best interest, permitting the child to choose which parent it prefers to live with if it be over ten years of age, unless the parent chosen be unfit to take charge of the child by reason of moral depravity, habitual drunkenness, incapacity, or poverty. . . . No child under seven years of age shall be separated from its mother unless the court finds there are compelling reasons therefor."

rationale of which, according to the Code Commission, is "… to avoid a tragedy where a mother has seen her baby torn away from her No man can sound the deep sorrows of a mother who is deprived of her child of tender age..."[29]

The tender-age presumption in Article 213 does not distinguish between legitimate and illegitimate children,[30] but insofar as legitimate children are concerned, one of the effects of a decree of legal separation[31] is that "…the custody of the minor children shall be awarded to the innocent spouse, subject to the provisions of Article 213…" However, in the absence of a court order granting custody of the child to the mother, the tender-age presumption does not supersede the father's right to joint parental authority and joint custody over his child.[32] In other words, the guilty spouse cannot be deprived of his inherent right to parental authority over his children, because a "bad" husband does not necessarily make a "bad" father.[33]

Once the child makes a choice pursuant to Article 213, the court must investigate whether or not the parent chosen is fit to assume parental authority and custodial responsibility[34]; the court is not bound by the child's choice of parent if it finds that the same is not for the child's best interest.[35] Its task of choosing the parent to whom custody shall be awarded is not a ministerial function to be determined by a simple determination of the age of a minor child.[36] Because while the tender-age presumption is strong,

---

[29] Pablo-Gualberto v. Gualberto GR No. 154994 June 28, 2005.

[30] Masbate v. Relucio GR No. 235498 July 30, 2018. In Gamboa-Hirsch v. Hirsch GR No. 174485 July 11, 2007 the child's parents were married to each other but the Supreme Court overturned the lower court's award of joint custody to them, and granted sole custody to the mother pursuant to the tender-age presumption under Article 213.

[31] Under Article 63 of the Family Code. The decree of legal separation does not dissolve the marriage of the parties.

[32] Salientes v. Abanilla GR No. 162734 August 29, 2006.

[33] Cang v. Court of Appeals GR No. 105308 September 25, 1998.

[34] Espiritu v. Court of Appeals GR No. 115640 March 15, 1995.

[35] Perkins v. Perkins GR No. 35698 September 12, 1932; Sy v. Court of Appeals GR No. 124518 December 27, 2007.

[36] Espiritu v. Court of Appeals, supra.

it is not conclusive as it can be overcome by "compelling reasons": For instance, sexual preference or moral laxity alone does not prove parental neglect or incompetence[37].

In fact, a child's choice of parent under Article 213 shall be considered only in custody disputes between parents who are married to each other because they are accorded joint parental authority by Article 211.[38] The choice is not available to an illegitimate child whose mother has sole parental authority under Article 176, unless she is shown to be unfit or unsuitable.[39] Mothers are entitled to the sole parental authority of their illegitimate children, notwithstanding the father's recognition of such children.[40]

In Briones v. Miguel (2004),[41] the Supreme Court denied the petition of a father for custody of his illegitimate child from the latter's maternal grandparents since the mother lived and worked in Japan. Nevertheless, the Court opened the possibility for a father to assume custody over his illegitimate child:

> An illegitimate child is under the sole parental authority of the mother. In the exercise of that authority, she is entitled to keep the child in her company. <u>The Court will not deprive her of custody, absent any imperative cause showing her unfitness to exercise such authority and care.</u>
>
> xxx
>
> Applying Article 213 (paragraph 2) of the Family Code, the CA awarded the custody of Michael Kevin Pineda Miguel to his mother, Respondent Loreta P. Miguel. While acknowledging that petitioner truly loved and cared for his son and

[37] Pablo-Gualberto v. Gualberto, supra.
[38] Masbte v. Relucio, supra.
[39] Id.
[40] Spouses Paet v. Damito GR No. 248406 October 1, 2019.
[41] Briones v. Miguel GR No. 156343 October 18, 2004.

considering the trouble and expense he had spent in instituting the legal action for custody, it nevertheless found no compelling reason to separate the minor from his mother. Petitioner, however, was granted visitorial rights.

xxx

Having been born outside a valid marriage, the minor is deemed an illegitimate child of petitioner and Respondent Loreta. Article 176 of the Family Code of the Philippines explicitly provides that "illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code." This is the rule regardless of whether the father admits paternity.

xxx

David v. Court of Appeals held that the recognition of an illegitimate child by the father could be a ground for ordering the latter to give support to, but not custody of, the child. <u>The law explicitly confers to the mother sole parental authority over an illegitimate child; it follows that only if she defaults can the father assume custody and authority over the minor</u>. Of course, the putative father may adopt his own illegitimate child; in such a case, the child shall be considered a legitimate child of the adoptive parent.

There is thus no question that Respondent Loreta, being the mother of and having sole parental authority over the minor, is entitled to have custody of him. She has the right to keep him in her company. She cannot be deprived of that right, and she may not even renounce or transfer it "except in the cases authorized by

> law."
> Not to be ignored in Article 213 of the Family Code is the caveat that, generally, no child under seven years of age shall be separated from the mother, except when the court finds cause to order otherwise.

Even in Masbate v. Relucio (2018), the Supreme Court disagreed with the lower court's decision to grant the father temporary, albeit limited custody ahead of trial, on the ground that the same overturned the tender-age presumption with nothing but the father's bare allegations. Yet the Court invoked the child's best interest when it recognized the possibility of a father having legal custody over his illegitimate child in the concept of substitute parental authority, because it was he who had actual custody over her:

> In the event that Renalyn is found unfit or unsuitable to care for her daughter, Article 214 of the Family Code mandates that **substitute parental authority** shall be exercised by the **surviving grandparent**. However, the same Code further provides in Article 216 that "[i]n default of parents or judicially appointed guardian, the following persons shall exercise substitute parental authority over the child in the order indicated:"
>
> Article 216. x x x
> (1) The surviving grandparent as provided in Art. 214;
> (2) The oldest brother or sister, over twenty-one years of age, unless unfit or disqualified; and
> (3) **The child's actual custodian, over twenty-one years of age, unless unfit or disqualified**.
>
> x-x-x
>
> It was not disputed that Ricky James was in

> actual physical custody of Queenie when Renalyn left for Manila to pursue her studies until the instant controversy took place. As such, Ricky James had already assumed obligations and enjoyed privileges of a custodial character, giving him a cause of action to file a case of habeas corpus to regain custody of Queenie as her actual custodian.
>
> Indeed, it may be argued that Article 176 of the Family Code has effectively disqualified the father of an illegitimate child from exercising substitute parental authority under Article 216 even if he were the actual custodian of the child under the premise that no one is allowed to do indirectly what he is prohibited to do directly. However, the Court cannot adopt a rigid view, without running afoul to the overarching consideration in custody cases, which is the **best interest of the minor**…. (emphasis supplied)

The Court ruled that the minor's best interest demands that a proper trial be conducted to determine if she had, indeed, been neglected and abandoned by her mother, rendering the latter unfit to exercise parental authority over her. The trial had to adjudicate whether it was in the child's best interest that she be in the custody of her father rather than her grandparents upon whom the law accords a far superior right to exercise substitute parental authority:

> The Court cannot close its eyes to the sad reality that not all fathers, especially those who have sired children out of wedlock, have risen to the full height of a parent's responsibility towards his offspring. Yet, here is a father of an illegitimate child who is very much willing to take on the whole gamut of parenting. He, thus, deserves, at the very least, to be given his day in court to prove that he is entitled to regain custody of his daughter. As such, the CA's order to remand the case is proper.

Shades of shared parenting

To recapitulate, the Philippine Congress has enacted various laws to safeguard children during their tender years.

On the part of the Supreme Court, in Perez v. Court of Appeals (1996)[42] it recognized the importance of the presence and participation of both parents in raising their children:

> The wisdom and necessity for the exercise of joint parental authority need not be belabored. The father and the mother complement each other in giving nurture and providing that holistic care which takes into account the physical, emotional, psychological, mental, social and spiritual needs of the child. By precept and example, they mold his character during his crucial formative years.

It then promulgated the Rule on Custody of Minors and Writ of Habeas Corpus in relation to Minors (2003),[43] which did not distinguish between legitimate and illegitimate children. Section 2 of the Rule provides that a verified petition for child custody may be filed by "any person claiming such right". The parties during pre-trial may agree on the minor's custody and should they fail to do so, the court shall issue a provisional order awarding custody of the minor to, as far as practicable, both parents jointly, and in any case the court shall consider the best interest of the minor as well as nine other considerations—the first of which is any extrajudicial agreement which the parties may have bound themselves to comply with, and the last of which the preference of the minor over seven years of age and of sufficient discernment. After trial, the court shall award the custody of the minor to the proper party, considering the minor's best interests.[44]

---

[42] Perez v. Court of Appeals GR No. 118870 March 28, 1996.
[43] Administrative Matter No. 03-04-04-SC.
[44] Id., Sections 12, 13(a), 14, and 18.

On the other hand, in 2003 the Department of Social Welfare and Development (DSWD) promulgated its Administrative Order No. 40 or the "Guidelines on the Implementation of Empowerment and Reaffirmation of Paternal Abilities (ERPAT)".[45] The Guidelines recognized that parental roles should "transcend from merely a provider to shared parenting in order to promote a nurturing environment to all the members of the family". It gives importance and emphasis on the father's parental roles and abilities in child-rearing, development, care, and behavior management, and seeks to eliminate traditional gender role differentiations. It involves the conduct of community-based sessions for fathers and the training and organization of father-leaders and volunteers in the community to facilitate their collective action and participation in promoting their important role in the family: To enhance and strengthen their capabilities in performing familial tasks and responsibilities.

While the Secretariat of the ASEAN reported that "responsibility for care work is high on women's responsibility and there is negligible support from the governments to promote shared parenting responsibilities",[46] the report does not contain any findings which specifically apply to the Philippines.[47]

---

[45] Republic of the Philippines. Department of Social Welfare and Development. Administrative Order No. 40, Series of 2003. Guidelines on the Implementation of Empowerment and Reaffirmation of Paternal Abilities (ERPAT). Accessed October 5, 2019, https://www.dswd.gov.ph/issuances/AOs/AO_2003-040.pdf.

[46] The ASEAN Secretariat. Projected Gender Impact of the ASEAN Community, pp. 4, 54, 133. Accessed October 15, 2019, https://www.asean.org/storage/2015/11/Final-Gender-Dimensions-of-the-ASEAN-Economic-Community-updated-on-13.03.pdf.

[47] Page 53 of the report even states that "The region has a good example in the case of the Philippines where gender mainstreaming has been institutionalized and implemented and systematically monitored." See also pages 171-172: "The Philippines stands at an unequivocal edge with respect to gender mainstreaming, among the ASEAN Member States… Gender machinery and gender mainstreaming is at a relatively mature stage in Philippines…"

In fact, a 2016 UNICEF study[48] found that while Filipino children, particularly adolescents, lacked emotional intimacy or closeness with their fathers, new data showed that more adolescents were reporting the presence of their fathers in their regular activities. It also discovered that the confidence of Filipino fathers in their ability to parent their child effectively is a moderating factor in their children's' negative behavior.

Conflict between the tender-age presumption and shared parenting?

In Dacasin v. Dacasin (2010),[49] the Supreme Court had the occasion to decide an apparent conflict between the tender-age presumption and shared parenting. The case involved the child custody agreement entered into by petitioner, an American and respondent, his former wife who is a Filipina, whose marriage was dissolved through a petition for divorce filed by the latter in the US. The Court held that the agreement was void because it was contrary to Philippine law since the parties were no longer married under US law when they executed it, and that their child was below seven (7) years old and, thus, could not be separated from her mother:

> … Indeed, the separated parents cannot contract away the provision in the Family Code on the maternal custody of children below seven years any more than they can privately agree that a mother who is unemployed, immoral, habitually drunk, drug addict, insane or afflicted with a communicable disease will have sole custody of a child under seven as these are reasons deemed compelling to preclude the application of the

---

[48] UNICEF. A Systematic Review of the Drivers of Violence Affecting Children: The Philippines (October 2016), at page 81. Accessed October 9, 2019, https://www.unicef.org/philippines/media/501/file/National%20Baseline%20Study%20on%20Violence%20Against%20Children%20in%20the%20Philippines:%20Systematic%20literature%20review%20of%20drivers%20of%20violence%20affecting%20children%20.pdf.

[49] GR No. 168785 February 5, 2010.

> exclusive maternal custody regime under the second paragraph of Article 213.

The Court further stated that the mother had repudiated the agreement, and explained that the agreement would be valid if the parties had not divorced or separated because, in such a case, Article 211 of the Family Code would apply. But the Court's misgivings about the Agreement were primarily centered on the fact that the parties' common child was below seven (7) years old at that time and its mechanical application of the tender-age presumption:[50]

> It will not do to argue that the second paragraph of Article 213 of the Family Code applies only to judicial custodial agreements based on its text that "No child under seven years of age shall be separated from the mother, unless the court finds compelling reasons to order otherwise." To limit this provision's enforceability to court sanctioned agreements while placing private agreements beyond its reach is to sanction a double standard in custody regulation of children under seven years old of separated parents. This effectively empowers separated parents, by the simple expedient of avoiding the courts, to subvert a legislative policy vesting to the separated mother sole custody of her children under seven years of age "to avoid a tragedy where a mother has seen her baby torn away from her." This ignores the legislative basis that "[n]o man can sound the deep sorrows of a mother who is deprived of her child of tender age."
>
> It could very well be that Article 213's bias favoring one separated parent (mother) over the other (father) encourages paternal neglect, presumes incapacity for joint parental custody, robs the parents of custodial options, or hijacks

[50] Which it frowned on in Espiritu v. Court of Appeals, supra.

decision-making between the separated parents. However, these are objections which question the law's wisdom not its validity or uniform enforceability. The forum to air and remedy these grievances is the legislature, not this Court. At any rate, the rule's seeming harshness or undesirability is tempered by ancillary agreements the separated parents may wish to enter such as granting the father visitation and other privileges. These arrangements are not inconsistent with the regime of sole maternal custody under the second paragraph of Article 213 which merely grants to the mother final authority on the care and custody of the minor under seven years of age, in case of disagreements.

xxx

Instead of ordering the dismissal of petitioner's suit, the logical end to its lack of cause of action, we remand the case for the trial court to settle the question of Stephanie's custody. Stephanie is now nearly 15 years old, thus removing the case outside of the ambit of the mandatory maternal custody regime under Article 213 and bringing it within coverage of the default standard on child custody proceedings – the best interest of the child. As the question of custody is already before the trial court and the child's parents, by executing the Agreement, initially showed inclination to share custody, it is in the interest of swift and efficient rendition of justice to allow the parties to take advantage of the court's jurisdiction, submit evidence on the custodial arrangement best serving Stephanie's interest, and let the trial court render judgment. This disposition is consistent with the settled doctrine that in child custody proceedings, equity may be invoked to serve the child's best interest. (emphasis ours)

Nevertheless, the Court recognized the desirability of shared parenting, albeit in cases of children above the age of seven (7), when it noted that the parties "initially showed inclination to share custody" when they executed their agreement.

Indeed, Justice Abad in his Separate Opinion stressed that such agreements should be valid even if the child is below seven:

> I agree with the reasons that the majority of the Court gave in support of the decision, except one. I am uncomfortable with the proposition that an agreement between the mother and the father on a joint custody over a child below seven years of age is void for being contrary to law and public policy. True, the law provides in Article 363 of the Civil Code that "No mother shall be separated from her child under seven years of age, unless the court finds compelling reasons for such measure." The State can think up ways of protecting the child. But the 1987 Constitution acknowledges in Article II, Section 12, the natural and primary right and duty of parents to nurture their children and that the State must support them in this respect.
>
> <u>I submit that, in the matter of child custody, the mutual will of the child's parents takes precedence in the absence of circumstances that justify recourse to the law</u>. The law becomes relevant, only as a default, if a separated couple cannot agree on the custody of their child. The law should not supplant parental discretion or unnecessarily infringe on parental authority.
>
> xxx
>
> <u>The State ought not to interfere with the right of parents to bring up their child unless its exercise</u>

causes potential harm to him. The State steps in, through the law, only if there are compelling reasons to do so. State intrusion is uncalled for where the welfare of a child is not jeopardized.

xxx

The second paragraph of Article 213 of the Family Code should not be read as prohibiting separated couples from agreeing to a custody arrangement, other than sole maternal custody, for their child of tender age. The statutory preference for the mother's custody comes into play only when courts are compelled to resolve custody fights between separated parents. Where the parents settle the matter out of court by mutual agreement, the statutory preference reserved to the mother should not apply.

xxx

Consequently, if separated parents mutually stipulate to uphold some form of joint authority over their children of tender age, it cannot in any way be regarded as illegal or contrary to public policy. Joint parental authority and custody is the norm and should be viewed as the more desirable custody arrangement. It encourages continuing contact with and involvement of both parents in the lives of their children. It can only redound to the minor's greater well-being and should thus be favored.

To declare that a joint custody agreement over minors of tender age contravenes Philippine laws will only discourage separating couples from sharing parental duties and responsibilities. It will render shared parenthood illegal and unduly promote paternal alienation. It also presumes that separated parents cannot cooperate and compromise for the welfare of

> their children. It constitutes undue interference in the parents' intrinsic right to direct their relations with their child. (emphasis ours)

The applicability of shared parenting in an Asian, or at the very least a Southeast Asian setting, is also supported by a 2018 decision of the Family Justice Courts of Singapore[51] in a child custody case involving resident foreigners:

> … The ideal state is understandably for a child to be in an intact family where he or she lives with and is lovingly cared for jointly by both parents. Yet, upon the breakdown of a marriage, this is simply no longer fully achievable. The family justice system nevertheless aspires to achieve the ideal state of affairs for the child, or the closest to it possible. But to ignore the realities, including the parental conflict, the parties' emotional baggage and the new dynamics of the various relationships, and impose in all situations a modified version of the perceived ideal (such as equal-time shared parenting or shared care and control) can do more harm than good. Thus in considering whether shared care and control would be in the child's welfare, the court will have to consider factors such as that particular child's needs at that stage of life, the extent to which the parents are able to co-operate within such an arrangement, and whether it is easy for that child, bearing in mind his or her age and personality, to live in two homes within one week.
>
> xxx
>
> It is pertinent to note the view offered by social

---

[51] Tau v. Tat (2018). Accessed October 14, 2019, https://www.supremecourt.gov.sg/docs/default-source/module-document/judgement/gd-dca-44-do-2-final-pdf.pdf.

> science and family law experts that "in an optimal parenting plan, responsibilities and time are not allocated according to a principle of abstract fairness to the parents, but by family functionality … as it relates to the child's best interests," and taking into account the "needs, and developmental trajectories of young children."
>
> xxx
>
> … whichever party is granted care and control of Emma, co-parenting between the parties is always necessary. Experts agree that "[p]arents who collaborate in childrearing have a positive effect on their children's development and well-being," and that shared parenting "represents a key protective factor in (a) helping children adjust to separation and divorce and (b) establishing an ongoing healthy family environment in which to rear children and facilitate high-quality parenting."
>
> xxx
>
> The court should always be the last resort in which to resolve parental disagreements. I also urged both parties to be reasonable and more flexible and understanding should either party, on occasion, require some grace and latitude with carrying out the orders.

V. REDISCOVERING OUR ROOTS: THE PAST AS THE WAY TO THE FUTURE

Jose Rizal, who spent a considerable amount of time studying in Europe, particularly Spain, quoted a Filipino saying: *"Ang hindi marunong lumingon sa pinangalingan ay hindi makakarating sa paroroonan"* – he who does not know how to look back at where he came from will never get to his

destination. In a Report to the Code Commission, it was said that:

> The Philippines, by its contact with Western culture for the last four centuries, is a rightful beneficiary of the Roman law, which is a common heritage of civilization. For many generations that legal system as developed in Spain has been the chief regulator of the juridical relations among Filipinos. It is but natural and fitting, therefore, that when the young Republic of the Philippines frames its new Civil Code, the main inspiration should be the Roman law as unfolded and adapted in Spain, France, Argentina, Germany and other civil law countries.[52]

While the private laws of the Philippines and Spain have developed along different lines, their shared heritage and commonalities merit more than a passing glance into how Spanish private law has developed since the Philippine Civil Code took effect in 1950. Their shared histories should inspire Philippine legislators and policymakers to, again, examine Spanish laws and legal traditions, as well as those of the other countries whose civil codes are also derived from the Roman law and the Napoleonic Code— all of this for the purpose of making Philippine family law even more relevant and responsive to the best interest of children today.

---

[52] Report of the Code Commission, cited in Tolentino Arturo, 1990. *Commentaries and Jurisprudence on the Civil Code of the Philippines. Volume One with the Family Code of the Philippines*. Quezon City: Central Professional Books Inc. pp. 13-14.

THE CHAIN OF CUSTODY RULE IN DRUGS CASES AS IMPACTED BY THE WAR ON DRUGS: A COMPILATION AND ANALYSIS OF GOVERNING LAWS AND RECENT JURISPRUDENCE

Justice Raymond Reynold R. Lauigan[*]

<u>*Abstract*</u>

Drug abuse is a worldwide problem. In the Philippines, it occupies center stage in the consciousness of the Filipino public because, upon assuming office in 2016, former President Rodrigo Duterte launched an unprecedented campaign against illegal drugs. The administration's efforts to curb the drug menace through unrelenting and extensive entrapment or buy bust operations have resulted in a renewed focus on the chain of custody rule, which is designed to establish with moral certainty the identity of the confiscated drug and obviates the possibility of planting, switching, or contaminating evidence. This article humbly attempts to catalogue and analyze the general principles of the chain of custody rule, its

[*] The author is an Associate Justice of the Court of Appeals. He graduated Second Honors with a Juris Doctor degree from the Ateneo de Manila School of Law. He is a member of of the Corps of Professors of the Philippine Judicial Academy. In 2019, he was awarded by the Society for Judicial Excellence of the Supreme Court the Chief Justice Ramon Avanceña Judicial Excellence Award for being an Outstanding Regional Trial Court Judge of the Philippines. He was likewise conferred the Dangal ng Bayan Award by the Civil Service Commission Regional Office No. 02. He was also a recipient of an award from the Philippine Drug Enforcement Agency for exemplary dedication and incorruptible performance as a Judge. He was a private practitioner for 17 years, a professor of law for the last 26 years, and a resource person and lecturer in different for a. He was the President of the Integrated Bar of the Philippines Cagayan Chapter when the chapter was declared one of the outstanding chapters in the country.

governing laws, of which there have been significant updates of late, as well as jurisprudence prevailing on the subject, which as expected has markedly proliferated, through the prism of the government's war against drugs.

I. INTRODUCTION

As our nation stands on the brink of another presidential election, there is indubitably merit in looking back at the key policy considerations which have served as the driving force of the current administration. Among them, the war on drugs stands out, not only for its pervasiveness but also for its divisiveness.

In a paper published in 2016 in the Journal of Current Southeast Asian Affairs,[1] it was noted that the high ratings of the current administration in opinion surveys suggest widespread popular support for its violent crackdown on illegal drugs. Pulse Asia's last survey in September 2019 showed the President's performance approval rating at 78% and trust rating at 74%.[2] Although this showed a dip from his 2018 numbers, this is still significantly high especially when compared to those of the previous presidents helming the last three administrations.[3] Meanwhile, in June 2021, the Social Weather Stations (SWS) survey showed the President's net satisfaction rating at +62, which the Office of The Presidential Spokesperson claims to be the highest net satisfaction rating of the beginning of a Chief Executive's

[1] Reyes, Danilo Andres, The Spectacle of Violence in Duterte's "War on Drugs", in: Journal of Current Southeast Asian Affairs, 35, 3, 111–137 (2016).

[2] Pulse Research Asia, Inc., available at: https://www.pulseasia.ph/september-2019-nationwide-survey-on-the-performance-and-trust-ratings-of-the-top-philippine-government-officials/, October 7, 2019.

[3] Pia Ranada, Rappler, Duterte may cap term as most popular Philippine president. So what?. available at: https://www.rappler.com/newsbreak/in-depth/so-what-if-duterte-may-cap-term-as-philippines-most-popular-president. June 30, 2021.

final year in office,[4] all the more impressive in the midst of this raging Covid-19 pandemic.

A statistical analysis conducted by the SWS on their own June 2021 survey showed, however, that those who perceived the drug war to be “bloody” were less likely to be satisfied with the President.[5] Human rights advocates have certainly been vocal about their dissent. In a June 2020 report, the United Nation's High Commissioner for Human Rights (UNHCHR) collected and analysed nearly 900 written submissions from human rights defenders, journalists, and trade unionists, as well as the current administration,[6] and concluded that while the legal, constitutional and institutional framework in the Philippines contains human rights safeguards, as well as checks and balances, the long-standing overemphasis on public order and national security at the expense of human rights has become more acute in recent years. The report also noted that there have been strong calls for an international accountability mechanism.[7]

On 15 September 2021, it appeared that these calls for accountability were heeded.[8] Information that, in various cases, police may have planted evidence at crime scenes, produced false or misleading reports or took other measures to support claims of self-defense proved integral to the international tribunal’s approval of the commencement of an investigation into human rights violations in the country. A

---

[4] Office of the Presidential Spokesperson, On the SWS PRRD June 2021 Satisfaction Rating, available at: https://pcoo.gov.ph/OPS-content/on-the-sws-prrd-june-2021-satisfaction-rating/, September 24, 2021.

[5] Pia Ranada, Rappler, Perceived 'decisiveness, diligence' of Duterte key to his popularity – SWS, available at: https://www.rappler.com/nation/sws-says-perceived-decisiveness-diligence-duterte-key-popularity, September 24, 2021.

[6] Howard Johnson, BBC, Philippines drugs war: UN report criticises 'permission to kill', available at: https://www.bbc.com/news/world-asia-52917560, June 4, 2020.

[7] United Nations High Commissioner for Human Rights, Situation of human rights in the Philippines, June 29, 2020.

[8] International Criminal Court, Situation in the Philippines: ICC Pre-Trial Chamber I authorises the opening of an investigation, ICC-CPI-20210915-PR1610, available at: https://www.icc-cpi.int/Pages/item.aspx?name=PR1610, September 15, 2021.

report from the UNHCHR was cited as basis, stating police reports showed the repeated recovery of guns bearing the same serial numbers from different victims in different locations, suggesting a pattern of planting evidence.[9]

From a judicial vantage point, this may not come as a surprise. In fact, the Supreme Court has taken judicial notice of the planting of evidence by the police in drugs cases, recently stating thus:

> [T]he Court is not unaware that, in some instances, law enforcers resort to the practice of planting evidence to extract information or even to harass civilians. x x x In this connection, the Court reminds the trial courts to exercise extra vigilance in trying drug cases, x x x lest an innocent person be made to suffer the unusually severe penalties for drug offenses.[10]

Obviously, the war on drugs is divisive for a reason. As the illegal drug trade is widely considered as a scourge of our society,[11] anybody who is perceived to be an effective adversary against it is bound to receive respectable support. However, it is also common knowledge that there are certain boundaries when it comes to the policing and prosecution of crime which most people agree should not be crossed. Evidence tampering, as exemplified above, and police brutality and vigilantism are examples of practices widely considered as beyond the pale. Accordingly, part of the struggle for law enforcers and legal practitioners, including police officers, judges, prosecutors, and defense attorneys, is that they often share the same odium for people who engage in these drug-related crimes. However, in many instances, they are called upon to square this sentiment with the need

---

[9] International Criminal Court, Decision on the Prosecutor's request for authorisation of an investigation pursuant to Article 15(3) of the Statute, No. ICC-01/21, September 15, 2021.

[10] Michael Casilag vs. People of the Philippines, G.R. No. 213523, March 18, 2021.

[11] People of the Philippines vs. Chen Tiz Chang, et.al., G.R. No. 131872-73, February 17, 2000.

to uphold the fundamental rights enshrined in our Constitution, no matter how unsavory the beneficiaries seem to be.

In our country, violations of drugs laws are particularly worrisome because a huge segment of our population is vulnerable to its evils. The Supreme Court recently noted that most small-time drug users and retailers turn to illegal drugs because of poverty or the lack of any opportunity to better their lives.[12] Moreover, the Court has previously taken judicial notice that the proliferation of illegal drugs threatens not only the people's well-being, but also that of the youth and school children who often end up as victims.[13]

It is no wonder that the war on drugs has become a disruptive topic in the court of public opinion for the past several years. People are invested in the subject matter because, as Justice Minita Chico-Nazario, in the case of People v. Agulay,[14] so aptly described:

> Drug addiction has been invariably denounced as one of the most pernicious evils that has ever crept into our society. Those who become addicted to it, not only slide into the ranks of the living dead, but also become a grave menace to the law-abiding members of society. Peddlers of drugs are actually agents of destruction.

More importantly, it has also become an increasingly thorny and apparently evolving subject matter in our courts of law.

For one, in last year's ruling in the case of *Palencia v. Peopl*e,[15] the Supreme Court bemoaned the judicial inefficiency of "planned narcotics operations that net minuscule amounts of dangerous drugs" which swamp the

---

[12] Palencia y De Asis v. People, G.R. No. 219560, July 1, 2020.
[13] Social Justice Society v. Dangerous Drugs Board, G.R. Nos. 157870, 158633 &161658, November 3, 2008.
[14] G.R. No. 181747, September 26, 2008.
[15] Supra. See Note 12.

judiciary "with cases that barely create a ripple in the anti-narcotics drive," and spurred law enforcers to focus their attention and resources toward capturing the big fish, the drug cartels and kingpins that supply these dangerous drugs, instead of just the small fry, the small-time drug users and retailers.[16]

True, the administration's unrelenting focus on eliminating illegal drugs has resulted in a huge uptick in case filings. In less than a decade, the number of drugs cases have drastically taken over other crimes, increasing from less than 8,000 in 2009 to more than 70,000 in 2017.[17] However, this is offset by data showing that courts appear to be dismissing these cases by the thousands. For example, in 2016, of the 68,895 cases the prosecutors filed in court, 2,617 were dismissed. In 2017, the courts dismissed 5,270 cases out of the 70,706 cases filed, equivalent to about 7.5%. Often the main reason for dismissal is technical – that is, failure to observe procedural requirements, particularly on the chain of custody of the drugs seized.[18]

Thus, the Court has also lamented on the apparent tendency of law enforcement to perpetrate "violations of the constitutional rights of due process and the presumption of innocence in the name of peace and order."[19] In several cases decided in 2019, the Court heavily enjoined "the law enforcement agencies, the prosecutorial service, as well as the lower courts, to strictly and uncompromisingly observe and consider the mandatory requirements of the law on the prosecution of dangerous drugs cases."[20]

---

[16] Id.
[17] Lian Buan, Rappler, IN CHARTS: Drug cases take over PH courts, have low disposition rates, available at: https://www.rappler.com/newsbreak/iq/charts-number-drug-cases-disposition-philippine-courts, August 28, 2018. Data based on records of the National Prosecution Service (NPS) under the DOJ.
[18] Id.
[19] People v. Ordiz, G.R. No. 206767, September 11, 2019.
[20] People v. Garcia y Suing, G.R. No. 215344, June 10, 2019. See also People v. Dumanjug y Loreña, G.R. No. 235468, July 1, 2019 and also People v. Cardenas y Halili, G.R. No. 229046, September 11, 2019.

It is, therefore, apparent that, even as the country ushers in new leadership, the debate and dissection of the current administration's war on drugs and how it has permeated the lives of all Filipinos will most certainly continue. One cannot ignore the indelible mark it has left on our judicial system, with the Supreme Court's recent issuance of the rules on body-worn cameras in response to the rise in civilian casualties during the implementation of warrants, as well as the plethora of recent case law generated by the dramatic increase in drugs cases.

An updated re-examination of the existing laws on the oft-disregarded Chain of Custody Rule and a review of recent jurisprudence regarding the Supreme Court's interpretation and application of said laws appears beneficial. Moreover, with the current spotlight focused by the international community on human rights violations in our country, this analysis should be tethered to basic Constitutional mandates. Additionally, with the issuance of A.M. No. 21-06-08-SC on the use of body-worn cameras in the execution of arrest and search warrants as well as warrantless arrests, a brief foray into its possible effect on the chain of custody in drugs cases may also prove useful.

II. THE RULE OF LAW: THE PROTECTION OF FUNDAMENTAL RIGHTS AS GUARANTEED BY THE CONSTITUTION.

The standard espoused by the UNHCHR in its 2020 report, that efforts to address criminality and the proliferation of illicit drugs must be grounded in evidence, be consistent with the rule of law, and embody full respect for human rights,[21] is noble and at the forefront of the Supreme Court's recent rulings.

[21] Supra. See Note 7.

In *People v. Tomawis*,[22] the Supreme Court pronouncing thusly:

> The role of the Court in the fight against the illegal drug menace is to ensure that the guilty is convicted and that the appropriate penalty is imposed. In the discharge of this task, the Court must be mindful that the rights of the individual must, at all times, be safeguarded. As Blackstone's ratio goes, it is better that 100 guilty persons should escape than that one innocent person should suffer.

The Court emphasized that, however noble the purpose or necessary the exigencies of the campaign against illegal drugs may be, it is still a governmental action that must always be executed within the boundaries of law.[23]

To put things in perspective, the Court in the older case of *Secretary of Justice v. Hon. Lantion*,[24] eloquently opined that:

> The individual citizen is but a speck of particle or molecule *vis-à-vis* the vast and overwhelming powers of government. His only guarantee against oppression and tyranny are his fundamental liberties under the Bill of Rights which shield him in times of need.

Although the Court later reversed its decision in the interest of foreign relations, the Court's subsequent Resolution[25] merely deferred the timing but did not negate the importance of the opportunity of the accused to be heard, thus the Court's lengthy discourse on due process and the guaranteed rights of an individual in a democratic society, *viz*:

---

[22] G.R. No. 228890, April 18, 2018.
[23] Id.
[24] G.R. No. 139465, January 18, 2000.
[25] G.R. No. 139465, October 17, 2000.

> Due process is comprised of two components — substantive due process which requires the intrinsic validity of the law in interfering with the rights of the person to his life, liberty, or property, and procedural due process which consists of the two basic rights of notice and hearing, as well as the guarantee of being heard by an impartial and competent tribunal.
>
> x x x
>
> One of the basic principles of the democratic system is that where the rights of the individual are concerned, the end does not justify the means. It is not enough that there be a valid objective; it is also necessary that the means employed to pursue it be in keeping with the Constitution. Mere expediency will not excuse constitutional shortcuts. There is no question that not even the strongest moral conviction or the most urgent public need, subject only to a few notable exceptions, will excuse the bypassing of an individual's rights. It is no exaggeration to say that a person invoking a right guaranteed under Article III of the Constitution is a majority of one even as against the rest of the nation who would deny him that right. (citations omitted)

The Constitution itself could not be more clear. Section 14, Article III Bill of Rights of the 1987 Constitution reads:

> 1. No person shall be held to answer for a criminal offense without due process of law.
> 2. In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the

> production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused: Provided, that he has been duly notified and his failure to appear is unjustifiable.

In the more recent case of *People v. Que*,[26] the Court emphasized that the stringent requirements of our drug laws are not for stringency's own sake. Rather, these are calibrated to preserve the even greater interest of due process and the constitutional rights of those who stand to suffer from the State's legitimate use of force, and therefore, stand to be deprived of life, liberty, or property. This calibration ensures that the need for effective prosecution of those involved in illegal drugs is balanced with the preservation of the basic liberties that typify our democratic order.

Furthermore, as with all criminal cases, the quantum of proof required to warrant a conviction under R.A. No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act, and its related laws is proof beyond reasonable doubt. Section 2, Rule 133 of the Rules of Court defines proof beyond reasonable doubt, to wit:

> **Sec. 2 .** *Proof beyond reasonable doubt*. — **In a criminal case, the accused is entitled to an acquittal, unless his or her guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.**

The following ruling in *People v. Royol*[27] further sheds light on this matter, *viz*:

[26] G.R. No. 212994, January 31, 2018.
[27] G.R. No. 224297, February 13, 2019.

> This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be "presumed innocent until the contrary is proved." "Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution." Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be acquitted. As explained in *Basilio v. People* of the Philippines:
>
> xxx
>
> The burden of proof is on the prosecution, and unless it discharges that burden, the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.

Pursuant to this, the Supreme Court in *Tolentino v. People*[28] thus called for the authorities "to exert greater efforts in combating the drug menace using the safeguards that our lawmakers have deemed necessary for the greater benefit of our society." The Court added that this actually "redounds to the benefit of the criminal justice system by protecting civil liberties and at the same time instilling rigorous discipline on prosecutors."[29] The constitutional

[28] G.R. No. 227217, February 12, 2020.
[29] Id.

presumption of innocence of the accused and the requirement of proof of guilt beyond reasonable doubt thus compelled the Supreme Court to direct the lower courts to closely scrutinize the evidence in buy bust cases.[30] Hence, trial courts must not only determine the presence of the elements of the offense but likewise evaluate whether there was compliance by the police operatives with the chain of custody rule.

III. THE CHAIN OF CUSTODY RULE: RATIONALE, REQUIREMENTS, EXCEPTIONS, AND GENERAL PRINCIPLES.

Based on new cases, it can be said that the recent pattern of blatant disregard for the Chain of Custody Rule has served as the impetus for the Supreme Court to be even more emphatic in requiring its strict compliance. The ruling in *Tolentino* is but one among many wherein non-compliance with the requirements of the Chain of Custody Rule justified the acquittal of the accused.

The significance of Section 21 of R.A. No. 9165 as amended by R.A. No. 10640, or the Chain of Custody Rule, cannot be gainsaid. In the aforecited case of *Tolentino,* the Court explained:

> In the prosecution of drugs cases, the procedural safeguards that are embodied in Section 21 of R.A. No. 9165, as amended by R.A. No. 10640, are material, as their compliance affects the corpus delicti which is the dangerous drug itself and warrants the identity and integrity of the substances and other evidence that are seized by the apprehending officers.
>
> x x x

[30] Id.

> The law deserves faithful compliance, especially by the police officers who ought to have known the proper procedure in the seizure and handling of the confiscated items, especially since the small volume of the suspected drugs made it easier for the items to be corrupted or tampered with. It is only for justifiable and unavoidable grounds that deviations from the required procedure is excused.[31]

Likewise, in the more recent case of *Reyes Jr. vs. People*,[32] the Supreme Court repeated anew:

> We reiterate that the provisions of Section 21 of RA No. 9165 embody the constitutional aim to prevent the imprisonment of an innocent man. The Court cannot tolerate the lax approach of law enforcers in handling the very corpus delicti of the crime. Hence, Reyes must be acquitted of the charges against him given the prosecution's failure to prove an unbroken chain of custody.

A more detailed discussion of Section 21 of R.A. No. 9165 or the Chain of Custody Rule is thus in order.

What is Section 21 of R.A. No. 9165 or the Chain of Custody Rule?

Section 21(1), Article II of R.A. No. 9165 states:

> Sec. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as

---

[31] Id.
[32] G.R. No. 244545, February 10, 2021.

> instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

In addition, Section 21(a) of the Implementing Rules and Regulations *(IRR)* of R.A. No. 9165 mandates:

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided,* that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further,* that noncompliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall

> not render void and invalid such seizures of and custody over said items.

Notably, the following information can be found in the Implementing Rules but not in Section 21 of the R.A. No. 9165:

a. The place where to conduct the inventory

> Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures[…]

b. The Saving Clause

> Provided further, that noncompliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

What is the purpose of the Chain of Custody?

Jurisprudence further defines the chain of custody rule and highlights that its primary purpose is the authentication of the illegal drug as an object evidence, *viz*:

> Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements the law (RA 9265), defines chain of custody as the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic

laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

The chain of custody rule is but a variation of the principle that real evidence must be authenticated prior to its admission into evidence. To establish a chain of custody sufficient to make evidence admissible, the proponent needs only to prove a rational basis from which to conclude that the evidence is what the party claims it to be. In other words, in a criminal case, the prosecution must offer sufficient evidence from which the trier of fact could reasonably believe that an item still is what the government claims it to be. Specifically, in the prosecution of illegal drugs, the well-established federal evidentiary rule in the United States is that when the evidence is not readily identifiable and is susceptible to alteration by tampering or contamination, courts require a more stringent foundation entailing a chain of custody of the item with sufficient completeness to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with. This was adopted in *Mallillin* [sic] *v. People,* where this Court also discussed how, ideally, the chain of custody of seized items should be established:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the

> time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[33]

The Chain of Custody Rule is, in other words, intended to prove the *corpus delicti* in drug cases and to ensure that the identity of the illegal drug is intact.

In *People vs. Dela Cruz,*[34] the Supreme Court laid down the elements that must be established to sustain convictions for illegal sale and illegal possession of dangerous drugs:

> In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the corpus delicti or the illicit drug as evidence.
>
> On the other hand, in prosecutions for illegal possession of a dangerous drug, it must be shown that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug. Similarly, in this case, the evidence of the corpus delicti must be established beyond reasonable doubt.

---

[33] People of the Philippines vs. Romy Lim, G.R. No. 231989, September 4, 2018, citing Malillin vs. People, G.R. No. 172953, April 30, 2008.
[34] G.R. No. 205821, October 1, 2014.

From the foregoing, proof of the *corpus delicti* is essential whether the crime charged is the sale or the possession of illegal drugs. On describing what constitutes the *corpus delicti* or literally, the body of the crime, in drugs cases, the ruling in the recent case of *Tan v. People*[35] is instructive, to wit:

> In cases involving dangerous drugs, the confiscated drugs constitute the very corpus delicti of the offense and the fact of their existence is necessary to sustain a judgment of conviction. It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty. In other words, a conviction cannot be sustained if there is a persistent doubt as to the identity of the seized drugs. Apart from showing that the elements of sale and possession are present, the fact that the substance illegally sold and possessed is the same substance offered in court as exhibit must be established with the same degree of certitude as that needed to sustain a guilty verdict. Should the State not definitively establish that the dangerous drugs presented in court were the very same substance actually recovered from the accused, the criminal prosecution for sale or possession of drugs should fail because the guilt of the accused was not established beyond reasonable doubt. The identity of the seized drugs is established by showing the duly recorded authorized movements and custody of seized drugs from the time of seizure or confiscation to receipt by the investigating officer then turn-over to the forensic laboratory up to presentation in court.

In *People vs. Patacsil*,[36] the Supreme Court also stated:

[35] G.R. No. 232611, April 26, 2021.
[36] G.R. No. 234052, August 6, 2018.

> [I]t is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to obviate any unnecessary doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.
>
> Failure to prove the integrity of the *corpus delicti* renders the evidence for the prosecution insufficient to prove the guilt of the accused beyond reasonable doubt, and hence, warrants an acquittal. Thus, the Court has required that in order to establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[37]

Is the chain of custody rule a substantive or procedural directive?

For the past few years, the Supreme Court has been resolute about compliance with the Chain of Custody Rule:

> The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that requisite to make a finding of guilt.[38]

---

[37] Joel David v. People of the Philippines, G.R. No. 253336, May 10, 2021.
[38] People of the Philippines vs. Tamil Selvi Veloo and Chandrar Nadarajan, G.R. No. 252154, March 24, 2021.

In fact, in *Patacsil*, the Court stoutly declared this to be a substantive and not merely a procedural requirement:

> It is well-settled that the procedure in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.[39]

A similar ruling was rendered in the case of *People v. Barrion*,[40] to wit:

> As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law." This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment."

More recently, in *Tumabini v. People*,[41] the Court, in upholding the precedence of Section 21 of R.A. No. 9165 due to its substantive nature over the general remedial provision of Section 8, Rule 126 of the Revised Rules of Criminal Procedure, had the opportunity to expound on the subject, *viz*:

> In determining whether a rule prescribed by the Supreme Court, for the practice and procedure of the lower courts, abridges, enlarges, or modifies any substantive right, the test is whether the rule really regulates procedure, that is, the judicial process for enforcing rights and duties recognized by substantive law and for justly administering

[39] Supra. See Note 36.
[40] G.R. No. 240541, January 21, 2019.
[41] G.R. No. 224495, February 19, 2020.

> remedy and redress for a disregard or infraction of them. If the rule takes away a vested right, it is not procedural. If the rule creates a right such as the right to appeal, it may be classified as a substantive matter; but if it operates as a means of implementing an existing right then the rule deals merely with procedure.
>
> Here, Congress enacted Sec. 21 of R.A. No. 9165 to ensure the identity and integrity of the seized drugs and to prevent tampering thereof. As stated in People v. Acub, in all prosecutions for violations of R.A. No. 9165, the corpus delicti is the dangerous drug itself. Its existence is essential to a judgment of conviction. Hence, the identity of the dangerous drug must be clearly established. Narcotic substances are not readily identifiable. To determine their composition and nature, they must undergo scientific testing and analysis. Narcotic substances are also highly susceptible to alteration, tampering, or contamination. It is imperative, therefore, that the drugs allegedly seized from the accused are the very same objects tested in the laboratory and offered in court as evidence. The chain of custody, as a method of authentication, ensures that unnecessary doubts involving the identity of seized drugs are removed.

Who has the burden of showing compliance thereto?

Verily, the burden of the prosecution in dangerous drugs cases is both substantial and unflinching. In line with the inviolable constitutional rights of the accused to be presumed innocent and to be accorded due process, the prosecution in these cases *always* has the burden of proving compliance with the procedure outlined in Section 21 of R.A. No. 9165.[42] The Supreme Court has held that:

---

[42] People of the Philippines vs. Mario Manabat, G.R. No. 242947, July 17, 2019.

> In the prosecution of drug-related cases, the State bears not only the burden of proving these elements, but also of proving the corpus delicti or the body of the crime. Since the confiscated drug is the very corpus delicti of the crime, its preservation must be shown to the satisfaction of the court, from the seizure and marking thereof until its submission to the court. In other words, compliance with the chain of custody rule must be demonstrated in order to obviate unnecessary doubts concerning the identity of the evidence.[43]

Therefore, in order to establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[44]

What are the links in the chain of custody?

The links in the chain of custody that must be duly established are: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the seized illegal drug by the apprehending officer to the investigating officer; (3) the turnover of the illegal drug by the investigating officer to the forensic chemist for laboratory examination; and (4) the turnover and submission of the illegal drug from the forensic chemist to the court.[45]

A. The First Link – seizure and marking of the illegal drug.

Case law describes the first link of the chain of custody as follows:

---

[43] People of the Philippines vs. Michael Andanar and Mary Jane Garbo, G.R. No. 246284, June 16, 2021.

[44] People of the Philippines vs. Don Emilio Cariño, G.R. No. 233336, January 14, 2019.

[45] Supra. See Note 33.

> The first link of the chain of custody is the seizure and marking of the illegal drug recovered from the accused, as well as compliance with the physical inventory and photograph requirements. Marking is the starting point in the custodial link. It serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed, thus, preventing switching, planting or contamination of evidence. Marking though should be done in the presence of the apprehended violator immediately upon confiscation to truly ensure that they are the same items which enter the chain of custody. After marking the seized items, the apprehending team shall conduct a physical inventory and photograph the seized items in the presence of the accused or his representative or counsel, a representative from the media and the DOJ, and any elected public official. The purpose of the law in having these witnesses is to prevent or insulate against and deter possible planting of evidence. Failure to comply with this three (3) witness rule, however, does not ipso facto invalidate or render void the seizure and custody over the items as long as the prosecution is able to show that (a) there is justifiable ground for noncompliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.[46]

Marking

Jurisprudence dictates that the preservation of the chain of custody applies regardless of whether the prosecution is brought for a violation of the already repealed R.A. No. 6425 (the Dangerous Drugs Act of 1972) or the prevailing law, R.A. No. 9165, which always starts with the marking of the articles immediately upon seizure. The

[46] People of the Philippines vs. SPO1 Alexander Estabillo, G.R. No. 252902, June 16, 2021.

marking serves to separate the marked articles from the corpus of all other similar or related articles from the time of the seizure until disposal thereby obviating the hazards of switching, "planting," or contamination of the evidence.[47]

"Marking" means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized. Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because the succeeding handlers of the specimens will use the markings as reference.[48]

In *People v. Sanchez*,[49] the Supreme Court noted that Section 21 of R.A. No. 9165 and its implementing rule do not expressly specify where the "marking" of the seized items in warrantless seizures should be done in order to ensure that the evidence seized upon apprehension is the same evidence subjected to inventory and photography. However, the Court ratiocinated that to be consistent with the "chain of custody" rule, the "marking" of the seized items — to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence — should be done (1) in the presence of the apprehended violator and (2) immediately upon confiscation. Furthermore, according to the Court, this step initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the apprehending officers from harassment suits based on planting of evidence under Section 29 and on allegations of robbery or theft.[50]

This ruling was reiterated in *People vs. Beran*,[51] where the Supreme Court declared that the immediate marking of the item seized in a buy-bust operation in the presence of the accused is indispensable to establish its identity in court.

---

[47] Supra. See Note 35.
[48] People of the Philippines vs. Anastacio Hementiza, G.R. No. 227398, March 22, 2017.
[49] G.R. No. 175832, October 15, 2008.
[50] Id.
[51] G.R. No. 175832, October 15, 2008.

More recently, in *Jocson vs. People*,[52] the drug item was not marked at the place where it was seized. The Supreme Court, noting the distance between the place of arrest and the station where the investigating officer marked the item, observed that the item seized which remained unmarked may have been exposed to switching, planting, and contamination en route. Thus, the Court concluded that by the time of marking, it was no longer certain that what was shown to the investigating officer was the same item seized from petitioner. The apprehending officer did not also offer any justification for this procedural lapse, and the Court thus ordered Jocson's acquittal.[53]

Inventory and Photographing

Aside from marking, a list of the seized or recovered items needs to be prepared. Photographs of the items and the individuals involved in the operation must also be taken. Under the law, the phrase "immediately after seizure and confiscation" means that inventory and photographing was intended to be made immediately after, or even at, the place of apprehension. However, if this is not practicable, the rules do allow that the inventory and photographing be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer or team.[54]

Exceptions to the marking, inventory and photographing requirements

Despite the foregoing, the Supreme Court has held that the immediate physical inventory and photograph of the confiscated items at the place of arrest may be excused when the safety and security of the apprehending officers and the witnesses required by law, or of the items seized, are threatened by immediate or extreme danger - such as

[52] Antonio Jocson vs. People of the Philippines, G.R. No. 199644, June 19, 2019.
[53] Id.
[54] Supra. See Note 22.

retaliatory action of those who have the resources and capability to mount a counter-assault.[55]

Moreover, the Court has also emphasized that failure to comply with the procedures prescribed by Section 21 of R.A. No. 9165 does not always render void the seizure and custody of drugs in a buy-bust operation. In one case, the Court pronounced that the Chain of Custody requirements were complied with by the marking of the seized items in the presence of the accused at the PDEA office. In this case, the marking had to be made there to ensure the safety of the PDEA officers as there were only six (6) of them who effected the arrest in a slum area. Thus, marking upon immediate confiscation has been interpreted to include marking at the nearest police station, or at the office of the apprehending team. What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items because the same will be utilized in ascertaining the guilt or innocence of the accused.[56]

Furthermore, in *People vs. Calvelo y Consada,*[57] marking was done in the presence of the accused inside a vehicle on the way to the PDEA Office. As there was also a certificate of inventory signed by the team leader, and an elected public official and a media representative were witnesses to the inventory, the Court opined that it is not "beating any new path by holding that the failure to undertake the required photography and immediate marking of seized items may be excused by the unique circumstances of a case,"[58] adding that:

> In *People v. Resurreccion*, we already stated that "marking upon immediate confiscation" does not exclude the possibility that marking can be at the police station or office of the apprehending team. In the cases of *People v. Rusiana, People v. Hernandez*, and *People v. Gum-Oyen*, the

[55] Supra. See Note 33.
[56] G.R. No. 214440, June 15, 2016.
[57] G.R. No. 223526, December 6, 2017.
[58] Id.

apprehending team marked the confiscated items at the police station and not at the place of seizure. Nevertheless, we sustained the conviction because the evidence showed that the integrity and evidentiary value of the items seized had been preserved. To reiterate what we have held in past cases, we are not always looking for the strict step-by-step adherence to the procedural requirements; what is important is to ensure the preservation of the integrity and the evidentiary value of the seized items, as these would determine the guilt or innocence of the accused. We succinctly explained this in *People v. Del Monte* when we held:

We would like to add that noncompliance with Section 21 of said law, particularly the making of the inventory and the photographing of the drugs confiscated and/or seized, will not render the drugs inadmissible in evidence. Under Section 3 of Rule 128 of the Rules of Court, evidence is admissible when it is relevant to the issue and is not excluded by the law or these rules. For evidence to be inadmissible, there should be a law or rule which forbids its reception. If there is no such law or rule, the evidence must be admitted subject only to the evidentiary weight that will [be] accorded it by the courts.

x x x

We do not find any provision or statement in said law or in any rule that will bring about the non-admissibility of the confiscated and/or seized drugs due to noncompliance with Section 21 of Republic Act No. 9165. The issue therefore, if there is noncompliance with said section, is not of admissibility, but of weight — evidentiary merit or probative value — to be given the evidence. The weight to be given by the courts on said evidence

> depends on the circumstances obtaining in each case. (citations omitted)

Non-exceptions to the requirement of marking, inventory and photographing

In contrast, the following grounds were not deemed by the Supreme Court as justifiable: (a) the presence of a crowd or the bare invocation of inconvenience; (b) being in a Muslim area; and (c) discretion of the team leader and commotion.

In *People. v. Dumanjug*, the Supreme Court rejected the buy-bust team's argument that it failed to conduct the marking, inventory, photography of the seized drug immediately at the place of arrest because a crowd of two hundred (200) people had gathered, allegedly creating a dangerous environment. The Court emphasized that bare invocation of inconvenience does not translate to compliance with the Chain of Custody Rule.[59]

Moreover, in *People v. Sebilleno,*[60] the Supreme Court did not mince words in condemning the Solicitor General's excuse that the inventory was conducted in the police station, because "the apprehending team would be putting their lives in peril considering that the area where the buy-bust operation was conducted is a notorious Muslim community," stating thus:

> The Office of the Solicitor General, which represents no less than the Government of the Philippines in a number of legal matters, ought to be circumspect in its language. This averment from the Solicitor General exhibits biased, discriminatory, and bigoted views; xxx These are the words that when left unguarded, permeate in the public's consciousness, encourage further

[59] Supra. See Note 43.

[60] People of the Philippines vs. Gilbert Sebilleno, G.R. No. 221457, January 13, 2020.

> divide and prejudices against the religious minority, and send this country backward.
>
> x x x
>
> As stressed, the prosecution must not only plead, but also prove an excusable ground. This Court fails to see how a Muslim community can be threatening or dangerous, that would put our law enforcers' lives to [sic] peril.

Finally, in *People v. Manuel de la Rosa*,[61] the Court found the following reasons presented by the officers unpersuasive, *viz*:

> As can be gleaned from the witnesses' testimony, the excuses they proffered to justify the distant conduct of the inventory fifty-four (54) kilometers away from the place of seizure, are: 1) it was the team leader's discretion to conduct the inventory in Calapan City; (2) to avoid commotion at the place of seizure; and (3) they could not secure the witnesses required by law in the said place.
> The Court finds that these excuses are unmeritorious.

Insulating Witnesses

R.A. No. 9165 and its implementing rules also require that the marking, inventory and photographing should be done not only in the presence of the accused but also in the presence of three witnesses, namely: (a) a representative from the media, (b) an elective official, and (c) a representative from the DOJ.

Jurisprudence states that, as the marking, inventory and photographing must be done at the place of the arrest, the three required witnesses should already be physically

---

[61] People of the Philippines vs. Manuel de la Rosa, G.R. No. 230228, December 13, 2017.

present at the time of apprehension - a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. Simply put, the buy-bust team has enough time and opportunity to bring with them said witnesses. In *Tomawis*, the Supreme Court explained:

> The reason is simple, it is at the time of arrest - or at the time of the drugs' "seizure and confiscation" - that the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.
>
> x x x
>
> The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*, without the insulating presence of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.
>
> The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest.
>
> It is at this point in which the presence of the three witnesses is most needed, as it is their presence at

> the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.[62]

Section 21, Article II of RA 9165, clearly outlines the procedure which the police officers must strictly follow to preserve the integrity of the confiscated drugs and/or paraphernalia used as evidence. The provision requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; (2) the physical inventory and photographing must be done in the presence of: (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy of the same and the seized drugs must be turned over to the PNP Crime Laboratory within 24 hours from confiscation for examination.[63]

The requirement of the presence of insulating witnesses at the place of apprehension was decreed as early as the 2016 case of *People v. Reyes*.[64] Here, the Supreme Court said:

> The objective of requiring [the insulating witnesses'] presence during the buy-bust operation and at the time of the recovery or confiscation of the dangerous drugs from the accused in the area

[62] Supra. See Note 22.
[63] People of the Philippines vs. Dave Claudel, G.R. No. 219852, April 3, 2019.
[64] People of the Philippines vs. Jehar Reyes, G.R. No. 199271, October 19, 2016.

> of operation was to ensure against planting of evidence and frame up. It was clear that ignoring such objective was not an option for the buy-bust team if its members genuinely desired to protect the integrity of their operation. Their omission attached suspicion to the incrimination of the accused. The trial and appellate courts should not have tolerated the buy-bust team's lack of prudence in not complying with the procedures outlined in Section 21(1), supra, in light of the sufficient time for them to comply.[65]

In *People v. Malana*, as cited recently in *Casilag*, the Court emphasized that the presence of the required witnesses at the time of the inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose - to protect against the possibility of planting, contamination, or loss of the seized drug.[66]

Exceptions on compliance with the number of insulating witnesses.

The Supreme Court, however, has previously excused the lack of one or more witnesses. Anent the absence of a DOJ representative, the Court in *People v. Maralit*,[67] accepted that there was simply no prosecutor from the DOJ who was available to witness the inventory at that very late hour in the evening. Considering the immediacy of performing the marking and inventory of seized items which ought not be delayed, the Court affirmed the verdict of conviction, noting that during the marking and inventory of the seized items, there were two (2) barangay officials and one (1) media representative present. Moreover, the police officers properly explained the absence of the DOJ official, endeavored to comply with the mandatory procedure by ensuring the presence of the other required witnesses, and thus the integrity and evidentiary value of the seized evidence were

---

[65] Id.
[66] Supra. See Note 10.
[67] G.R. No. 232381, August 1, 2018.

nonetheless preserved because there were other witnesses to the marking and inventory of the seized bricks of marijuana.

The aforementioned case of *Maralit* was also cited recently in *Estabillo*, which too resulted in a conviction.[68] Furthermore, in *Tolentino,* the Court, citing *People v. Reyes*, laid out the other justifiable grounds for non-compliance with the required witnesses such as: (1) media representatives are not available at that time or that the police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in more remote areas; (2) the police operatives, with the same reason, failed to find an available representative of the National Prosecution Service; (3) the police officers, due to time constraints brought about by the urgency of the operation to be undertaken and in order to comply with the provisions of Article 125 of the Revised Penal Code in the timely delivery of prisoners, were not able to comply with all the requisites set forth in Section 21 of R.A. 9165.[69]

Also in *Tolentino*, citing *People v. Sipin*, the following additional grounds were noted: (1) the attendance of the required witnesses was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the

---

[68] Supra. See Note 46.
[69] Supra. See Note 10.

presence of the required witnesses even before the offenders could escape.[70]

Other practices that weaken the First Link

Certain practices also serve to weaken the first link, resulting in a gap in the chain of custody. For instance, placing the drugs in the poseur buyer's pocket after the buy bust operation and arrest and in bodily keeping the item is a doubtful, reckless, and suspicious way of ensuring the integrity of the drug item. In *People v. de la Cruz*, the Supreme Court declared that "[e]ven without referring to the strict requirements of Section 21, common sense dictates that a single police officer's act of bodily-keeping the item(s) which is [sic] at the crux of offenses penalized under the Comprehensive Dangerous Drugs Act of 2002, is fraught with dangers." [71]

Instead, the Court has required that aside from marking, the seized items should be placed in an envelope or an evidence bag unless the type and quantity of these items require a different type of handling and/or container. The evidence bag or container shall accordingly be signed by the handling officer and turned over to the next officer in the chain of custody. The purpose of placing the seized item in an envelope or an evidence bag is to ensure that the item is secured from tampering, especially when the seized item is susceptible to alteration or damage.[72]

Moreover, in *People v. Habana*,[73] the Court also stated that it is imperative for the officer who seized the substance from the suspect to place his marking on its plastic container and seal the same, preferably with adhesive tape that cannot be removed without leaving a tear on the plastic container. If the substance is not in a plastic container, the officer should put it in one and seal the same. This way, the substance would assuredly reach the laboratory in the same condition

---

[70] Id.
[71] G.R. No. 205821, Oct. 1, 2014.
[72] Supra. See Note 41.
[73] G.R. No. 188900, March 5, 2010.

it was seized from the accused. Further, after the laboratory technician tests and verifies the nature of the substance in the container, he should put his own mark on the plastic container and seal it again with a new seal since the police officer's seal has been broken. Otherwise, if the sealing of the seized substance has not been made, this would result in the ridiculous and inefficient situation wherein the prosecution would have to present every police officer, messenger, laboratory technician, and storage personnel, the entire chain of custody, no matter how briefly one's possession has been. Each of them has to testify that the substance, although unsealed, has not been tampered with or substituted while in his care.[74]

All told, procedural deviations in marking, inventory, and photographing as well as the absence or deficiency in the required witnesses tend to compel the Court to conclude that that there is a huge gap in the first link of the chain of custody and can ultimately result in the acquittal of the accused.

R.A. No. 10640: amending the chain of custody rule and codifying the alternative place of marking and saving clause.

Effectivity: July 23, 2014

Application to pending cases: if the incident subject of the case took place after effectivity of R.A. No. 10640

Salient features:
- it reduced the number of insulating witness to only two – the elected barangay official AND the media OR NPS representative
- it made part of statutory law the *saving clause* and the *alternative place of marking*

On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165. Essentially, it incorporated the saving

[74] Id.

clause as well as the alternative place of marking, inventory, and photographing—formerly relegated to the implementing rules and case law, thus:

> (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official **and** a representative of the National Prosecution Service **or** the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided,* That the **physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable**, in case of warrantless seizures: *Provided, finally,* That **noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items**. (Emphasis suppled) [75]

The amendment reflects the proponents' recognition that the strict implementation of the original Section 21 of R.A. No. 9165 could be impracticable for the law enforcers' compliance, and that the stringent requirements could unduly hamper their activities towards drug eradication.[76]

[75] Supra. See Note 33.
[76] Supra. See Note 28.

For instance, the Supreme Court noted in *Lim*, that in her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe admitted that "while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said section contributed to the ineffectiveness of the government's campaign to stop increasing drug addiction and also resulted in the conflicting decisions of the courts." Specifically, she noted that compliance with the rule on witnesses during the physical inventory is difficult. Media representatives are not always available, especially in more remote areas. Also, there were instances where elected barangay officials themselves were involved in the punishable acts apprehended. In addition, she observed that the requirement that the inventory be done at the police station is also very limiting as police stations appeared to be far from locations where accused persons were apprehended.

In *Lim*, the Court also took note of the similar views shared by Senator Vicente C. Sotto III who stated that the substantial number of acquittals in drug-related cases due to the varying interpretations of the prosecutors and the judges on Section 21 of R.A. No. 9165 reflects the need for "certain adjustments so that we can plug the loopholes in our existing law" and "ensure [its] standard implementation." In his Co-sponsorship Speech, he declared:

> Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates. The presence of such syndicates that have the resources and the capability to mount a counter-assault to apprehending law enforcers makes the requirement of Section 21(a) impracticable for law enforcers to comply with. It makes the place of seizure extremely unsafe for the proper inventory and photograph of seized illegal drugs.[77]

[77] Supra. See Note 33.

Thus, according to Sotto, Section 21(a) of RA 9165 needs to be amended to address the foregoing situation. Admitting that the legislature did not realize this in 2002, Sotto acknowledged that the safety of the law enforcers and other persons required to be present in the inventory and photography of seized illegal drugs may be threatened by an immediate retaliatory action of drug syndicates at the place of seizure. The place where the seized drugs may be inventoried and photographed has to include a location where the seized drugs as well as the persons who are required to be present during the inventory and photograph are safe and secure from extreme danger. He therefore proposed that the physical inventory and taking of photographs of seized illegal drugs be allowed to be conducted either in the place of seizure or at the nearest police station or office of the apprehending law enforcers. Moreover, non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted.[78]

Prescinding from the above, it is clear that the legislature did not intend the saving clause to be applied indiscriminately. Application of the saving clause requires justifiable grounds which must be explained and proven by the prosecution.

In *People of the Philippines v. Benjamin Feriol,*[79] the Court clarified that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly

[78] Id.
[79] G.R. No. 232154, August 20, 2018.

preserved. However, as required in *People v. Almorfe,* the Court added that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved. Also, the Court, citing *People v. De Guzman,* emphasized that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[80]

Accordingly, the mere statement of unavailability without serious attempts and earnest efforts to contact the witnesses is not a justifiable excuse for their absence. Non-compliance may only be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. In *David v. People*,[81] the Supreme Court declared:

> While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances. Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for noncompliance. These considerations arise from the fact that police officers are ordinarily given sufficient time - beginning from the moment they have received the information about the activities of the accused until the time of his arrest - to prepare for a buy-bust operation, and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.

---

[80] Id.

[81] G.R. No. 253336, May 10, 2021. See also Amroding Lindongan vs. People of the Philippines, G.R. UDK 16615, February 15, 2021.

B. The Second Link – The turn-over of the illegal drug to the Investigator.

The second link in the chain of custody pertains to the turnover of the illegal drug seized by the apprehending officer to the investigating officer. This is a necessary step as it is the investigating officer who shall conduct the proper investigation and prepare the necessary documents for the developing criminal case.[82]

In line with this, the Supreme Court has required that the identity of such investigating officer to whom possession of the seized drugs were turned over should be properly established.[83]

This was reiterated by the Court in the recent case of *People v. Del Rosario,*[84] wherein it held that:

> The second link in the chain of custody is the transfer of the seized drugs by the apprehending officer to the investigating officer. The investigating officer shall conduct the proper investigation and prepare the necessary documents for the proper transfer of the evidence to the police crime laboratory for testing. Thus, the investigating officer's possession of the seized drugs must be documented and established.
>
> Here, the name of the investigator was neither identified nor mentioned by the prosecution. SPO1 Naredo failed to specify the person to whom he turned over the seized items upon reaching the police station. It was merely stated that "the police officers prepared a request for laboratory examination and drug testing." However, the specific person who handled the seized items for

[82] Supra. See Note 46.
[83] People of the Philippines vs. Arturo Enriquez, G.R. No. 197550, September 25, 2013.
[84] G.R. No. 235658, June 22, 2020.

> the preparation of the required documents was not named in the records. When the apprehending officer is unable to identify the investigating officer to whom he turned over the seized items, this Court has held that such circumstance, when taken in light of the several other lapses in the chain of custody that attend the case, raises doubts as to whether the integrity and evidentiary value of the seized illegal drugs had been preserved.

Exception to the Second Link

When the investigating officer and apprehending officer is one and the same person, the Supreme Court has considered the chain of custody intact. In *People v. Siaton*,[85] based on the testimonies of the witnesses, the police officer who served as poseur-buyer took possession of the seized shabu. The same police officer turned the seized substance over to the forensic laboratory for testing. In other words, the seized substance did not change hands. According to the Supreme Court, in this sense, it can be said that there was no break in the 2nd link."[86]

C. The Third Link – the turn-over of the illegal drug to the Forensic Chemist for laboratory examination.

The third link in the chain of custody is the delivery by the investigating officer of the illegal drug to the forensic chemist at the forensic laboratory. Once in the laboratory, it will be the forensic chemist or the laboratory technician who will test and verify the nature of the substance.[87]

Failure to show how the illegal drug was handled after turn over to the laboratory and prior to examination by the forensic chemist has been held by the Supreme Court to be a

---

[85] G.R. No. 208353, July 4, 2016.
[86] Id.
[87] Supra. See Note 84.

fatal flaw and that such a glaring gap in the chain of custody tainted the integrity of the *corpus delicti*.[88]

Furthermore, in the aforecited case of *Del Rosario*, the Court found the prosecution's case wanting for lack of informative details as regards the third link, *viz*:

> Here, SPO1 Naredo testified that he was with PO1 Cruz when the latter delivered the seized items to SPO1 Agustin of the crime laboratory. Thus, there was an apparent transfer of the seized items from SPO1 Naredo to PO1 Cruz. As can be gleaned from SPO1 Naredo's testimony, however, no informative details were provided as to how, and at what point, the seized items were handed to PO1 Cruz, who was not even a member of the buy-bust team. There was also lack of information on the condition of the seized items when SPO1 Naredo transmitted the same to PO1 Cruz and when PO1 Cruz delivered it to SPO1 Agustin. Further, there was no documentary evidence indicating SPO1 Agustin's actual receipt of the seized items and how the latter handled the same upon his receipt thereof before transmitting the same to FC Rodrigo for forensic examination.[89]

Exception to the Third Link

In *Estabillo*, the Court held that the non-presentation of the receiving officer of the crime laboratory was justified because the drug items, consisting of bricks of cocaine wrapped in masking tape and distinctly marked and signed prior to submission to the crime laboratory, was not susceptible to alteration and tampering due to its physical characteristics and dissimilarity in form to ordinary substances used in daily activities. While strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule since it is highly susceptible to planting,

[88] Supra. See Note 43.
[89] Supra. See Note 84.

tampering, or alteration of evidence, it was not made applicable by the Court here because appellant was caught with four (4) bricks of cocaine weighing about one (I) kilo each.[90]

D. The Fourth Link – Turn over by Forensic Chemist to the Court.

The final link in the chain of custody is the turnover and submission of the seized items by the forensic chemist to the court.[91] The requirement includes testimony on how the forensic chemist handled the specimen after examination, stored, and retrieved the same before it was presented in court.

In *People v. Andanar*, the Supreme Court ruled that "[a]bsent any testimony regarding the management, storage, and preservation of the illegal drug allegedly seized herein after its qualitative examination, the fourth link in the chain of custody of the said illegal drug could not be reasonably established."[92]

To properly establish the fourth link, the Supreme Court in *People v. Omamos*[93] held that the forensic chemist should testify "on the details pertaining to the handling and analysis of the dangerous drug submitted for examination i.e. when and from whom the dangerous drug was received; what identifying labels or other things accompanied it; description of the specimen; and the container it was in. Further, the forensic chemist must also identify the name and method of analysis used in determining the chemical composition of the subject specimen."[94]

Moreover, the non-presentation of the evidence custodian has also been considered by the Court as a breach in the

[90] Supra. See Note 46.
[91] Id.
[92] Supra. See Note 43.
[93] G.R. No. 223036, July 10, 2019.
[94] Id.

fourth link. In *People v. Alon-Alon,*[95] the forensic chemist testified that she received the specimen from their receiving clerk, and then she turned it over to the evidence custodian for safekeeping after her examination thereof. She likewise retrieved the same from the evidence custodian before presenting it in court. However, the evidence custodian was not presented in court in clear disregard of the mandate that every link in the chain must testify, describing the condition of the seized item when it was delivered, and the precautions taken to ensure its integrity. The Court ruled that the foregoing facts show a breach in the link of the chain of custody, casting doubt as to the integrity of the seized item.[96]

Stipulation as to the testimony of the forensic chemist

However, in certain cases, the Court has allowed stipulation by the parties to dispense with the attendance and testimony of the forensic chemist, subject to certain conditions.[97]

In *People of the Philippines v. Gregorio Villalon, Jr.*,[98] the Supreme Court discussed the requirements for the forensic chemist's stipulated testimony to be acceptable and the consequence of non-compliance thereto, to wit:

> Should the parties opt to stipulate and dispense with the attendance of the forensic chemist, the Court clarified in *People v. Ubungen* that "it should be stipulated that the forensic chemist would have testified that he took the precautionary steps required in order to preserve the integrity and evidentiary value of the seized item, thus: (1) the forensic chemist received the seized article as marked, properly sealed, and intact; (2) he resealed it after examination of the content; and (3) he placed his own marking on the same to ensure that

---

[95] G.R. No. 237803, November 27, 2019.
[96] Id.
[97] People of the Philippines vs. Marciano Ubungen, G.R. No. 225497, July 23, 2018.
[98] G.R. No. 249412, March 15, 2021.

> it could not be tampered pending trial." Here, the parties' . . stipulation did not mention that any one of these precautionary steps were in fact done by the forensic chemist, from the time he received the seized items for laboratory examination and before they were delivered to the trial court for identification, leaving a gap in the chain of custody of said seized items. Clearly, absent any of the afore-mentioned conditions, the fourth link in the chain of custody of the said illegal drug could not be reasonably established.
>
> Accordingly, since the prosecution failed to account for the fourth link in the chain of custody of the items purportedly seized from accused appellant, its integrity and evidentiary value were already compromised, thereby warranting accused-appellant's acquittal.

In fact, the failure to include in the stipulations that the forensic chemist received the seized drugs intact, marked, and properly sealed; that the forensic chemist resealed the drug items after examination of the content; and, that the forensic chemist placed his own marking on the drug items constituted a huge gap in the chain of custody of the seized drugs.[99]

Absent the required stipulations which are designed to ensure that the drugs seized could not be tampered with pending trial, the fourth link cannot be established, thus, resulting in acquittal of the accused.[100]

In *Del Rosario*, the Court found that there was no testimonial or documentary evidence on how the forensic chemist kept the seized items while it was in her custody and in what condition the items were in until it was presented in court. While the parties stipulated on the forensic chemist's testimony, the stipulations did not provide information

[99] Ramel de Guzman vs. People of the Philippines, G.R. No. 246327, January 13, 2021.

[100] People of the Philippines vs. Manolito Rivera, G.R. No. 252886, March 15, 2021.

regarding the condition of the seized item while in her custody or if there was no opportunity for someone not in the chain to have possession thereof. Therein, the Court mentioned that, in the case *People v. Gutierrez*, the absence of precautions taken to ensure that there was no change in the condition of the object and no opportunity for someone not in the chain to have possession thereof resulted in the acquittal of the accused. Accordingly, the Court also acquitted Del Rosario.[101]

Exception to the fourth link

The non-presentation of the evidence custodian is not fatal as long as it is shown that the identity and integrity of the drug item was properly preserved. In the recent case of *People v. Guarin*,[102] the Supreme Court taking its cue from the cases of *People v. Amansec, People v. Hernandez,* and *People v. Zeng Hua Dian,* noted that "the non-presentation as witnesses of the evidence custodian and the officer on duty, should not be taken against the prosecution. The matter of presentation of witnesses by the prosecution is not for the court to decide. The prosecution has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses." While it was not shown to whom the seized drugs were transferred by the forensic chemist after his laboratory examinations, the prosecution was able to sufficiently show that the identity, integrity and probative value of the seized drugs had been properly preserved. Thus, the Supreme Court affirmed the Court of Appeals' ruling that the chain of custody of the seized drugs had not been broken.[103]

Necessity to Comply with all the links; The Presumption of Regularity cannot apply when there is a break in the Chain of Custody.

[101] Supra. See Note 84.
[102] G.R. No. 252857, March 18, 2021.
[103] Id.

Establishing every link in the chain of custody is crucial to the preservation of the integrity, identity, and evidentiary value of the seized illegal drug. Any gap or break in the chain of custody would create doubts on the identity of the drug item and thus tarnish the credibility of the *corpus delicti*.[104]

Failure to demonstrate compliance with even just one of these links creates reasonable doubt that the substance confiscated from the accused is the same substance offered in evidence.[105] In other words, the inability of the prosecution to establish with moral certainty the identity and the unbroken chain of custody of the dangerous drugs seized warrants a verdict of acquittal.[106] Furthermore, if no justifiable reason exists or was presented by the prosecution to deviate from the chain of custody requirements, it is the court's bounden duty to acquit the accused or overturn his conviction.[107]

Hence, in *Tolentino*, the Supreme Court declared:

> In *People v. Relato*, the Court explained that in a prosecution of the sale and possession of dangerous drugs prohibited under R.A. No. 9165, the State not only carries the heavy burden of proving the elements of the offense, but also bears the obligation to prove the corpus delicti, failing in which the State will not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt. It is settled that the State does not establish the corpus delicti when the prohibited substance subject of the prosecution is missing or when substantial gaps in the chain of custody of the prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court. Any gap renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt.

---

[104] Supra. See Note 26.
[105] Supra. See Note 98.
[106] Supra. See Note 43.
[107] Supra. See Note 36.

> x x x
>
> However, when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. [No.] 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties. As a result, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.
>
> x x x These lapses effectively produced serious doubts on the integrity and identity of the corpus delicti, especially in the face of allegations of frame-up. Thus, for the foregoing reasons, we must resolve the doubt in favor of accused-appellant, "as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt."[108]

Certainly, courts cannot merely rely on the presumption of regularity especially if there are deviations from the chain of custody rule. The Supreme Court has clarified that the presumption of regularity in the performance of official duties is simply just that—a mere presumption that is disputable and can be overcome by contrary proof. Also, such presumption of regularity cannot prevail over the stronger presumption of innocence in favor of the accused.[109]

---

[108] Supra. See Note 28.

[109] Perly Tuates vs. People of the Philppines, G.R. No. 230789, April 10, 2019. See also Supra, Note 32.

In *Tomawis*, the Supreme Court further explained:

> The uncertainties and inconsistencies in the testimony of the buy bust team and lack of information at specific stages of the seizure, custody, and examination of the seized drugs creates doubt as to the identity and integrity thereof.
>
> However, in drugs cases, more stringent standards must be used for the presumption of regularity to apply. The presumption should arise only when there is a showing that the apprehending officer/buy-bust team followed the requirements of Section 21, or when the saving clause may be properly applied. Gaps in the chain of custody cannot be filled in by the mere invocation of the presumption of regularity.
>
> Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity. In *People v. Enriquez*, the Court held:
>
> x x x [A]ny divergence from the prescribed procedure must be justified and should not affect the integrity and evidentiary value of the confiscated contraband. Absent any of the said conditions, the noncompliance is an irregularity, a red flag, that casts reasonable doubt on the identity of the *corpus delicti.* (Emphasis supplied)[110]

Reason for strictness in the application of the Chain of Custody Rule.

---

[110] Supra. See Note 22. See also Supra, Note 38.

The ruling in the recent case of *Veloo* is instructive where the Court, citing *Mallillin v. People,* reiterated that the strict application of the Chain of Custody Rule is dictated by "the exhibit's level of susceptibility to fungibility, alteration or tampering." Also, the Court observed that "the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small."[111]

Similarly, in *Tomawis*, the Court, also basing from *Mallillin,* noted that the "unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases by accident or otherwise in which similar evidence was seized or in which similar evidence was submitted for laboratory testing."[112]

Furthermore, in *Que*, the Court commented on the indistinguishable nature of most illegal drugs, since they can be mistaken for common household items, *viz*:

> Fidelity to the chain of custody requirements is necessary because, by nature, narcotics may easily be mistaken for everyday objects. Chemical analysis and detection through methods that exceed human sensory perception, such as specially trained canine units and screening devices, are often needed to ascertain the presence of dangerous drugs. The physical similarity of narcotics with everyday objects facilitates their adulteration and substitution. It also makes planting of evidence conducive.[113]

[111] Supra. See Note 38.
[112] Supra. See Note 22
[113] Supra. See Note 26.

The Supreme Court has thus cautioned that the sheer ease of planting drug evidence coupled with the severity of the imposable penalties in drugs cases compels strict compliance with the chain of custody rule. For perspective, at least twelve years and one day of imprisonment is imposed for unauthorized possession of dangerous drugs even for the most minute amount. It, thus, becomes inevitable that safeguards against abuses of power in the conduct of buy-bust operations be strictly implemented. This includes strict adherence to the chain of custody rule.[114]

The Saving Clause: A closer look.

On the other hand, acknowledging that the perfect chain of custody is almost always impossible to achieve, the Supreme Court in *Tolentino* held that minor lapses or deviations from the rule may be allowed, as long as it can be shown by the prosecution that the arresting officers put in their best effort to comply with the same and the justifiable ground for non-compliance is proven as a fact.[115] The Court further discussed:

> In the recent case of *People v. Lim*, the Court, speaking through now Chief Justice Diosdado M. Peralta, reiterated that testimonies of the prosecution witnesses must establish in detail that earnest effort to coordinate with and secure the presence of the required witnesses was made. In addition, it pointed out that given the increasing number of poorly built up drug-related cases in the courts' docket, Section 1 (A.1.10) of the Chain of Custody IRR should be enforced as a mandatory policy. The pertinent portions of the decision reads:
>
> To conclude, judicial notice is taken of the fact that arrests and seizures related to illegal drugs are typically made without a warrant; hence, subject to

[114] Supra. See Note 52.
[115] Supra. See Note 28.

inquest proceedings. Relative thereto, Sections 1 (A.1.10) of the Chain of Custody [IRR] directs:
A.1.10. Any justification or explanation in cases of non-compliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of R.A. No. 9165 shall be presented.

The amendment then substantially included the saving clause that was actually already in the IRR of the former Section 21, indicating that non-compliance with the law's requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid seizures and custody over confiscated items.[116]

Moreover, the Supreme Court even went further to state that even in the absence of evidence showing justifiable ground, such does not necessarily render the arrest illegal or make the seized items inadmissible as long as the integrity and evidentiary value of the items are preserved, *viz*:

> Numerous times this Court did not hesitate to acquit the accused for unjustified failure of law enforcement officers to strictly comply with Section 21 of Republic Act (R.A.) No. 9165, or the Comprehensive Dangerous Drugs Act of 2002. However, just as compliance therewith will not automatically result in conviction, failure to strictly comply therewith will not automatically result in acquittal, for as long as the saving clause

[116] Id.

in the law's Implementing Rules and Regulations (IRR) is triggered.

Nevertheless, We have also ruled that failure to strictly comply with Section 21 does not necessarily render the seized items inadmissible as long as there is a justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items are properly preserved by the apprehending team. Our pronouncement in *People v. Campomanes, et al.* is instructive: Although Section 21(1) of R.A. No. 9165 mandates that the apprehending team must immediately conduct a physical inventory of the seized items and photograph them, non-compliance with said section 21 is not fatal as long as there is a justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items are properly preserved by the apprehending team. Thus, the prosecution must demonstrate that the integrity and evidentiary value of the evidence seized have been preserved. We note that nowhere in the prosecution evidence does it show the "justifiable ground" which may excuse the police operatives involved in the buy-bust operation in the case at bar from complying with Section 21 of Republic Act No. 9165, particularly the making of the inventory and the photographing of the drugs and drug paraphernalia confiscated and/or seized. However, such omission shall not render accused-appellant's arrest illegal or the items seized/ confiscated from him as inadmissible in evidence. In *People v. Naelga*, We have explained that what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items because the same will be utilized in ascertaining the guilt or innocence of the accused.[117]

[117] Supra. See Note 38.

For example, in the aforecited case of *Veloo*, the weight of items seized precluded the possible alteration or tampering thereof:

> In the present case, we note that the total amount of drugs recovered from the Di bola bag alone, i.e., four (4) kilos, is hardly miniscule and that the drugs were found packed in heat-sealed containers, thus minimizing the risk of tampering, loss or mistake.[118]

Similarly, in *Estabillo* the Court considered the nature of the evidence and ruled that:

> Indeed, strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering or alteration of evidence. But this is not the case here where appellant was caught with four (4) bricks of cocaine weighing about one (I) kilo each. What makes the seized items here even more peculiar was that they were wrapped in masking tape and distinctly marked during the operation with LPP 06152315 2010, LPPl 06152315 2010, LPP2 06152315 2010 and LPP3 06152315 2010 together with the signature of the arresting officers. Photos of these four (4) bricks were also taken, allowing confirmation on whether the same bricks of cocaine seized from appellant landed on the hands of PSI Ballesteros. This would not have been possible had the case involved miniscule amounts.[119]

Still, the foregoing cases appear to be exceptions to the norm. In both, the illegal drug seized a) was of considerable size, b) packaged in such a way that it could not be easily

---

[118] Id.
[119] Supra. See Note 46.

tampered with, and c) distinctly identifiable from other items.

*A*s a general rule, the following conditions are required to trigger the saving clause:

1. The prosecution has the burden of proving as a fact that:
   a. Earnest efforts were exerted to comply with the procedural requirements;
   b. There is a justifiable cause for non-compliance; and, the integrity and identity of the illegal drug was preserved through steps taken by the police officers.

2. The prosecution has acknowledged, adequately explained the non-compliance and that the police officers alleged in their affidavit the deviation from the chain of custody and the reasons therefor.

The above requirements have been comprehensively explained and described by the Supreme Court in *Lim* and *Patacsil*. In sum, the Court requires a justifiable reason, and in the absence thereof, that no less than genuine and sufficient efforts were exerted by the apprehending officers to follow the prescribed procedure.[120] The justification or earnest efforts cannot be presumed but must be proven as a fact.[121] Recently, in *Casilag*, the Court reminded that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items.[122]

The mandatory requirements for such affidavit or sworn statement of the apprehending officers were laid down by the Supreme Court in *Lim*, to wit:

> 1. In the sworn statements/affidavits, the apprehending/seizing officers must state their

[120] Supra. See Note 37.
[121] Supra. See Note 38.
[122] Supra. See Note 10.

> compliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, and its IRR.
> 2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/ confiscated items.
> 3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.
> 4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.[123]

Significantly, the saving clause or the rule that excuses strict adherence to the mandatory requirements of Section 21(1) of R.A. No. 9165, as amended, and its IRR applies not just on arrest and/or seizure by reason of a legitimate buy-bust operation but also on those lawfully made in air or sea port, detention cell or national penitentiary, checkpoint, moving vehicle, local or international package/parcel/mail, or those by virtue of a consented search, stop and frisk (Terry search), search incident to a lawful arrest, or application of plain view doctrine where time is of the essence and the arrest and/or seizure is/are not planned, arranged or scheduled in advance.[124]

[123] Supra. See Note 33.
[124] Id.

IV. UPDATES AND TRENDS ON THE CHAIN OF CUSTODY RULE

The issuance of A.M. No. 21-06-08-SC

On 29 June 2021, the Supreme Court *en banc* issued A.M. No. 21-06-08-SC, or the Rules on the Use of Body-Worn Cameras in the Execution of Warrants, specifically in response to the increasing clamor of lawyers and human rights advocates groups for the Court to address increasing reports of civilian deaths resulting from the execution of warrants by the trial courts and the planting of evidence.

Upon its effectivity, law enforcement officers are now required to use a minimum of two devices (one body-worn camera and one alternative recording device) to capture relevant incidents during the execution of both arrest[125] and search[126] warrants as well as during warrantless arrests, insofar as practicable.[127]

However, as to dangerous drugs cases, the Rules explicitly do not have any bearing on the testimonies of witnesses to properly establish the different links of the chain of custody since Rule 4, Section 8 thereof states that:

> Section 8. Recordings Not a Substitute for Witnesses- For evidentiary purposes, the recordings captured by body-worn cameras or alternative recording devices are suppletory to the testimonies of the persons subject of the recording or the law enforcement officer. The recordings shall not be deemed as substitutes for the presentation of witnesses.

Pertinently, however, the Rules maintain a familiar high standard in establishing the chain of custody of the recordings.

---

[125] A.M. No. 21-06-08-SC, Rule 2.
[126] A.M. No. 21-06-08-SC, Rule 3.
[127] A.M. No. 21-06-08-SC, Rule 2, Section 3.

- Rule 4, Section 1 requires that the downloading of data from the body-worn camera or alternative recording device shall be done by the data custodian or representative within 24 hours from the time of recording. The same holds true for any recordings done by the media representative under Section 3, Rule 2, which shall be turned over and downloaded by the data custodian or his representative within the same time frame. The Rule requires that the data shall be encrypted and the metadata preserved.

- Rule 4, Section 2 states that the chain of custody over the recordings, shall, at all times, be preserved from improper access, review, and tampering.

- Rule 4, Section 3 directs the officers wearing or using the devices which captured the recordings or to whom the media representative turned over his recordings to retain and have custody of the recordings and ensure their security, confidentiality and integrity. To this end, prior to submission to the court, viewing of the recordings are limited to those enumerated in the Rules.

Non-compliance with the Rules affects the validity of a search such that failure to observe the requirements on the use of body-worn cameras or alternative recording devices, without reasonable grounds, during the execution of the search warrant shall render the evidence obtained inadmissible for the prosecution of the offense for which the search warrant was applied for.[128] Therefore, the Rules provide an additional pre-requisite in the execution of search warrants including those pertaining to dangerous drugs cases.

Moreover, specific to warrantless arrests effected under Section 21 of R.A. No. 9165, Section 3 of the Rules, allows the media representative to record the operation,

[128] A.M. No. 21-06-08-SC, Rule 3, Section 7.

subject to the custody requirements under Rule 4, Sections 1, 2, and 3 as discussed above. This further cements the importance of the presence of the media representative, which is no longer confined to that of being an insulating witness, but has now evolved into that of a more active participant who may take a recording as provided by the Rules.

Certainly, much remains to be seen about the real world application of these new Rules. While many have lauded it as a step in the right direction, questions are already being raised as to the perceivable gray areas therein, such as what constitutes 'reasonable grounds' for non-compliance. Invariably, judicial doctrine based on the Supreme Court's future rulings, interpreting and clarifying these Rules, should help shape the landscape of this developing frontier.

The continuing significance of judicial doctrine.

Without a doubt, judicial interpretation of a statute such as R.A. No. 9165 or of its own rules such as A.M. No. 21-06-08-SC, shall constitute a significant part of the law of the land. The Supreme Court's decisions, applying or interpreting the laws or the Constitution, form part of our legal system.[129] Furthermore, the date of effectivity of such judicial pronouncement shall be reckoned from the time the law being interpreted was originally passed since the Supreme Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.[130]

[129] Co v. Court of Appeals, G.R. No. 100776, October 28, 1993.
[130] OCA Circular No. 251-2018 re: Resolution dated 13 November 2018 in G.R. No. 231989 (People of the Philippines v. Romy Lim *y* Miranda) Providing, Among Others, Further Clarification on the Application and Interpretation of the Mandatory Policy that shall Govern the Practice in Maintaining the Chain of Custody to Preserve the Integrity and Evidentiary Value of Seized/Confiscated Illegal Drugs and Other Drug-Related Items.

Of similar import is the well-settled rule that, in a criminal case such as one for violation of R.A. No. 9165 and its related laws, an appeal throws the whole case open for review. Thus, the scope of the appellate court's review is not limited merely to errors assigned by the parties, *viz*:

> In fact, it becomes the duty of the Court to correct any error in the appealed judgment, whether it is made the subject of an assignment of error or not. It is axiomatic that an appeal in criminal cases confers upon the Court full jurisdiction and renders it competent to examine the record and revise the judgment appealed from. Therefore, even at this stage of the proceedings, it is imperative for proper chain of custody to be established in order to affirm the conviction of an accused because a conviction must prudently rest on the moral certainty that guilt has been proven beyond reasonable doubt.[131]

As such, the appellate court can look into proper compliance with the chain of custody rule even if it was not raised as an issue or addressed during the proceedings in the lower court, to wit:

> Since compliance with the procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely. complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate

[131] Supra. See Note 35.

court's bounden duty to acquit the accused, and perforce, overturn a conviction."[132]

In this light, the trend towards acquittal in dangerous drugs cases is both telling and perturbing. In 2021, preliminary data suggests that almost 70% of the cases decided by the Supreme Court as of June 2021, as enumerated below, resulted in a verdict of acquittal for non-compliance with the Chain of Custody Rule.

- *People of the Philippines vs. SP01 Alexander Estabillo*, G.R. No. 252902, June 16, 2021 – conviction; compliance with the chain of custody

- *People of the Philippines vs. Michael Andanar and Mary Jane Garbo*, G.R. No. 246284, June 16, 2021 – acquittal; non compliance

- *Joel David vs. People of the Philippines*, G.R. No. 253336, May 10, 2021 - acquittal; non compliance

- *Jasper Tan vs. People of the Philippines*, G.R. No. 232261, April 26, 2021 - acquittal; non compliance

- *People of the Philippines vs. Tamil Selvi Veloo and Chandrar Nadarajan*, G.R. No. 252154, March 24, 2021 - conviction; the absence of the DOJ representative was not fatal because the integrity of drug items preserved

- *Michael Casilag vs. People of the Philippines,* G.R. No. 213523, March 18, 2021 – acquittal; non compliance

- *People of the Philippines vs. Karlo Guarin,* G.R. No. 252857, March 18, 2021 – conviction; the chain of custody was not broken

---

[132] Supra. See Note 36.

- *People of the Philippines vs. Gergorio Villalon, Jr.*, G.R. No. 249412, March 15, 2021 – acquittal; non compliance

- *Ramel de Guzman vs. People of the Philippines*, G.R. No. 246327, January 13, 2021 – acquittal; non compliance

- *People of the Philippines vs. Manolito Rivera,* G.R. No. 252886, March 15, 2021 – acquittal; non compliance

- *Amroding Lindongan vs. People of the Philippines,* G.R. UDK 16615, February 15, 2021 – acquittal; non compliance

- *People of the Philippines vs. Salvador Alberto II,* G.R. No. 2470906, February 10, 2021 – conviction; compliance with Section 21

- *Franklin Reyes Jr.* vs. *People of the Philippines*, G.R. No. 244545, February 10, 2021 – acquittal; non compliance

This information, however, is not unexpected. The same observation, that the prosecution of dangerous drugs cases has been largely unsuccessful due to the failure to comply with the requirements of R.A. No. 9165, was made by the Supreme Court as early as 2012, in *People vs Ancheta*,[133] wherein it said:

> The disposition of this case reminds us of our observation in People v. Garcia, in which we took note of the statistics relating to dismissal and acquittal in dangerous drugs cases. There we mentioned that "[u]nder PDEA records, the dismissals and acquittals accounted for 56% because of the failure of the police authorities to

[133] G.R. No. 197371, June 13, 2012.

> observe proper procedure under the law, among others." We then noted an international study conducted in 2008, which showed that "out of 13,667 drug cases filed from 2003 to 2007, only 4,790 led to convictions (most of which were cases of simple possession); the charges against the rest were dismissed or the accused were acquitted." Our own data on the cases filed with us from 2006 to 2011 show that, out of those in which this Court made acquittals and reversals, 85% involved failure of the prosecution to establish the arresting officers' compliance with the procedural requirements outlined in Section 21 of R.A. 9165.

The parting words in *Patacsil* indeed remain salient to date, as it echoes the Court's prevailing support for the government's anti-drug campaign whilst being mindful of the need to protect the individual's basic rights, *viz*:

> As a final note, the Court finds it fitting to echo its recurring pronouncement in recent jurisprudence on the subject matter:
>
> The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions.
>
> Those who are supposed to enforce the law are not justified in disregarding the right of the

> individual in the name of order. Order is too high a price for the loss of liberty.[134]

V. CONCLUSION

The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of our government and to ensure that they function as a harmonious whole. Certainly, "in times of social disquietude or political excitement," such as these times we are currently living in, the moderating power of the judicial department attains even greater significance.[135]

The visible struggle of the Court to balance effective law enforcement *viz a viz* the protection of fundamental rights, by mandating faithful compliance with laws such as those pertaining to the chain of custody, is proof enough that our system of checks and balances is at work. Thus, as distressing as it is to imagine the amount of time, effort and, not to mention, costs spent in the unsuccessful prosecution of drugs cases, the abundance of recent jurisprudence upholding the rule of law and defending the constitutional and democratic rights and welfare of the people is also a source of some relief, knowing that the judiciary's mission remains tangible and not just a hollow ideal.

There is, however, no substitute for the participation and vigilance of the people, who, acting through their delegates, made possible the birth of the Constitution itself, as an expression of their sovereignty. To borrow the words of the Supreme Court in *Angara v. Electoral Commission*: "In the last and ultimate analysis, then, must the success of our government in the unfolding years to come be tested in the crucible of Filipino minds and hearts than in consultation rooms and court chambers."[136]

---

[134] Supra. See Note 36. See also Supra. Note 22.
[135] Angara v. Electoral Commission, G.R. No. 45081, July 15, 1936.
[136] Id.

The war on drugs cannot be won by mere presidential imprimatur, as the past six years have all too clearly shown. However, by focusing on the issue, the administration has undeniably succeeded in engaging the populace. According to the Commission on Elections website, voter turnout in 2016 was high at 81.95%. The number of registered voters has also continuously increased at an average rate of 9.5%, reaching 61.84 Million as of April 2019.

While we Filipinos appear largely united in our aversion towards the proliferation of illegal drugs, and, thus, strong support can be expected for the efforts of the administration, be it current or future towards the eradication of this societal menace, there is also no shortage of judicial doctrine as well as public sentiment that such efforts should always be in accordance with the fundamental law of the land and the procedures established by statutes, as interpreted by jurisprudence. It is the ultimate challenge then for the succeeding administration to continue to harness this palpable energy amongst the people in order to translate it, not just into impassioned public discourse but more importantly, into useful civic action.

***