

Office Conflict: An Analysis of Section 22, Canon III of the 2023 Code of Professional Responsibility and Accountability vis-à-vis Conflict of Interest Under Philippine Law and Jurisprudence and the Social Justice Mandate of the Public Attorney’s Office

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I. INTRODUCTION

The legal profession has always been characterized as a privilege that is “clothed with public interest.”¹ Being imbued with public interest, those who practice law necessarily adhere to a set of stringent standards of professionalism and responsibility, in the pursuit of protecting the interest of clients and maintaining the integrity of the Philippine justice system. This is enshrined in the Lawyer’s Oath taken by each lawyer upon becoming a member of the Philippine Bar.²

Part of a lawyer’s duty to protect the interest of his or her client is the prohibition against representing conflicting interests.³ The same is anchored on such lawyer’s duty to ensure his or her fidelity to his or her clients.⁴ Thus, the rules on situations involving conflict of interest are enunciated in the Code of Professional Responsibility,⁵ and are likewise elaborated in pertinent jurisprudence.⁶

On the other hand, such conflict of interest has been an impediment to some indigent clients from receiving legal services from the Public Attorney’s Office (PAO), which is the “principal law office of the [g]overnment in extending free legal services to indigent persons”⁷ As to conflict of interest,

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1. *Ladim v. Ramirez*, A.C. No. 10372, Feb. 21, 2023, *available at* <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68960> (last accessed Apr. 30, 2023).
 2. Supreme Court, Code of Professional Responsibility and Accountability, Administrative Matter No. 22-09-01-SC [SC A.M. No. 22-09-01-SC], at 57 (May 29, 2023).
 3. *Parungao v. Lacuanan*, A.C. No. 12071, 935 SCRA 248, 257 (2020).
 4. *Id.*
 5. *Id. See, e.g.*, SC A.M. No. 22-09-01-SC, canon II, §§ 33 & 44.
 6. *Pilar v. Ballicud*, A.C. No. 12792, 962 SCRA 414, 422 (2020) (citing *Aniñon v. Atty. Sabitsana, Jr.*, A.C. No. 5098, 669 SCRA 76, 81-82 (2012) (citing *Quiambao v. Bamba*, A.C. No. 6708, 469 SCRA 1, 10-11 (2005))).
 7. Department of Budget and Management & Public Attorney’s Office, Rules and Regulations Implementing an Act Reorganizing and Strengthening the Public

the PAO implements strict protocols in representing clients with conflicting interests⁸ or even a risk thereof.⁹ Indeed, refusing to accept clients on the ground of conflict of interest has been described as “a normal occurrence” in the PAO.¹⁰ This, in turn, finds sheer relevance in the phenomenon of indigent persons being denied the opportunity for legal representation, as the demand thereof for legal services “greatly exceeds the supply.”¹¹

Thus, the foregoing is ostensibly addressed by the new 2023 Code of Professional Responsibility and Accountability (2023 CPRA),¹² which was promulgated on 11 April 2023. The 2023 CPRA introduced a new provision — Section 22, Canon III — specifically tailored to the PAO’s extension of legal services to indigent clients notwithstanding a situation involving representation of conflicting interests by any of the lawyers thereof, and the mitigation of such risk. Section 22, Canon III reads —

Section 22. *Public Attorney’s Office; conflict of interest.* — The Public Attorney’s Office is the primary legal aid service office of the government. In the pursuit of its mandate under its charter, the Public Attorney’s Office shall ensure ready access to its services by the marginalized sectors of society in a manner that takes into consideration the avoidance of potential conflict of interest situations which will leave these marginalized parties unassisted by counsel.

Attorney’s Office (PAO), Amending for the Purpose Pertinent Provisions of Executive Order No. 292, Otherwise Known as the “Administrative Code of 1987,” as Amended, Granting Special Allowance to PAO Officials and Lawyers, and Providing Funds Therefor, Republic Act No. 9406, rule II, § 4 (2006).

8. Public Attorney’s Office, 2021 Revised Public Attorney’s Office Operations Manual, ch. II, art. 8 (1) (Dec. 14, 2021).
9. Public Attorney’s Office, Code of Conduct for Public Attorneys and Employees of the Public Attorney’s Office, PAO Memorandum Circular No. 007, Series of 2010 [PAO Memo Circ. No. 007, s. 2010], § 6 (B) (b) (Aug. 27, 2010).
10. Jeo Angelo Elamparo, *Implicated Rights and Neglected Duties in the Public Attorney’s Improper Invocation of Conflict of Interest for Indigent Litigants*, 95 PHIL. L.J. 879, 895 (2022).
11. David H. Taylor, *Conflicts of Interest and the Indigent Client: Barring the Door to the Last Lawyer in Town*, 37 ARIZ. L. REV. 577, 580 (1995).
12. SC A.M. No. 22-09-01-SC.

A conflict of interest of any of the lawyers of the Public Attorney's Office incident to services rendered for the Office shall be imputed only to the said lawyer and the lawyer's direct supervisor. Such conflict of interest shall not disqualify the rest of the lawyers from the Public Attorney's Office from representing the affected client, upon full disclosure to the latter and written informed consent.¹³

While Section 22, Canon III of the 2023 CPRA seemingly addresses the issue of indigent clients being denied legal services of the PAO on account of conflict of interest, the same, however, raises concerns with respect to its consistency with existing principles on the rule of conflict of interest in prevailing law and jurisprudence. Furthermore, the PAO's policy on conflicting interests is likewise found to be incongruent with the jurisprudential legal framework of the rule on conflict of interest.

Thus, in this Article, the intersection of: (1) the concept of conflict of interest under Philippine law and jurisprudence; (2) the PAO's policy on conflict of interest; and (3) the implications of Section 22, Canon III of the 2023 CPRA thereon shall be examined, including the potential issues arising therefrom in light of the social justice mandate of the PAO and indigent persons' constitutional right to access to justice.

A. The Promulgation of the 2023 CPRA and the Relevant Provisions Thereof as to Representation of Indigent Persons and Marginalized Sectors of the Society Notwithstanding Conflicting Interests

On 11 April 2023, the new 2023 CPRA was promulgated by the Supreme Court through A.M. No. 22-09-01-SC, which took effect on 29 May 2023.¹⁴ The 2023 CPRA was "meant to foster an environment where ethical conduct performs a dedicated role in the administration of justice."¹⁵ Furthermore, the 2023 CPRA underscores the "conscious adoption of ethical standards" that takes into consideration "personal choices balanced against the demands of

13. *Id.* canon III, § 22.

14. SC A.M. No. 22-09-01-SC, General Provisions, § 3 & *Dizon v. Radoc*, A.C. No. 13675, July 11, 2023, at 6 n. 29, available at <https://sc.judiciary.gov.ph/13675-mary-rose-e-dizon-randolph-stephen-g-pleyto-and-jonash-belgrade-c-tabanda-vs-maila-leilani-trinidad> (last accessed Apr. 30, 2023).

15. SC A.M. No. 22-09-01-SC, pmb., para. 2.

right and justice”.¹⁶ Thus, the 2023 CPRA characterizes an ethical lawyer as someone “possessed of integrity,” who acts with “independence, propriety, fidelity, competence and diligence, equality[,] and accountability.”¹⁷

The 2023 CPRA amended existing provisions of the previous Code of Professional Responsibility (CPR), and otherwise introduced provisions now found in the CPRA. For the purposes of this Article, the relevant provisions with respect to conflict-of-interest situations involving indigent persons and marginalized sectors of the society shall be examined.

CPR	2023 CPRA
<p>Rule 14.03 – A lawyer <i>may not refuse to accept representation of an indigent client</i> unless:</p> <p>(a) he is not in a position to carry out the work effectively or competently;</p> <p>(b) <i>he labors under a conflict of interest between him and the prospective client or between a present client and the prospective client.</i>¹⁸</p>	<p>Canon V, Section 3. <i>Indigent person.</i> — A lawyer <i>shall not refuse the representation of an indigent person,</i> except if:</p> <p>(a) the lawyer is not in a position to carry out the work effectively or competently due to a justifiable cause;</p> <p>(b) <i>the lawyer will be placed in a conflict-of- interest situation; or</i></p> <p>(c) the lawyer is related to the potential adverse party, within the sixth degree of consanguinity or affinity, or to the adverse counsel,</p>

16. *Id.*

17. *Id.* para. 5.

18. Supreme Court, Code of Professional Responsibility, rule 14.03 (June 21, 1988) (repealed in 2023) (emphases supplied).

	<p>within the fourth degree.</p> <p>An indigent is any person who has no money or property sufficient for food, shelter and other basic necessities for oneself and one's family.¹⁹</p>
N/A	<p>Canon III, Section 22. <i>Public Attorney's Office; conflict of interest.</i> — The Public Attorney's Office is the primary legal aid service office of the government. In the pursuit of its mandate under its charter, the Public Attorney's Office shall ensure ready access to its services by the marginalized sectors of society in a manner that takes into consideration the avoidance of potential conflict of interest situations which will leave these marginalized parties unassisted by counsel.</p> <p>A conflict of interest of any of the lawyers of the Public Attorney's Office incident to services rendered for the Office shall be imputed only to the said lawyer and the lawyer's direct supervisor. Such conflict of interest shall not disqualify the rest of the lawyers from the Public Attorney's Office from representing the affected client,</p>

19. SC A.M. No. 22-09-01-SC, canon V, § 3 (emphases supplied).

	upon full disclosure to the latter and written informed consent. ²⁰
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Table 1: Comparison of Material Conflict of Interest Provisions in Relation to Representation of Indigent Clients/Marginalized Sectors of Society Under the CPR and the 2023 CPRA.

As can be gleaned above, while the 2023 CPRA, through Section 3, Canon V, amended Rule 14.03 of the old CPR, the former essentially retained the crux of the latter.²¹ In both provisions, lawyers are precluded from refusing the representation of indigent persons, unless the same would be put in a position wherein he or she would be representing conflicting interests. Thus, both the previous CPR and the 2023 CPRA recognize conflict of interest as an exception to a lawyer's obligation not to refuse the representation of indigent clients.

What is novel with the 2023 CPRA, as to the representation of marginalized sectors of society, is the introduction of a provision specific to the PAO — in relation to potential conflict-of-interest situations — in the form of Section 22, Canon III thereof.²² In the aforementioned provision, the PAO is mandated to “ensure ready access to its services by the marginalized sectors of society in a manner that takes into consideration the avoidance of potential conflict of interest situations.”²³ In doing so, Section 22, Canon III of the 2023 CPRA limits the imputation of conflict of interest to such lawyer and his or her direct supervisor and removes any disqualification from the rest of the lawyers of the PAO on the ground of conflict of interest, provided that full disclosure to the affected clients to be represented is made, and their written informed consent is obtained.

Notably, the provision in Section 22, Canon III does not have a counterpart in the previous CPR.²⁴ Needless to say, the same has crucial implications on the PAO's treatment of a conflict-of-interest situation,

20. *Id.* canon III, § 22.

21. Compare Code of Professional Responsibility, rule 14.03 with *id.* canon V, § 3.

22. SC A.M. No. 22-09-01-SC, canon V, § 3.

23. *Id.*

24. *Id.* canon III, § 22

notwithstanding its current policy thereon. While Section 3, Canon V of the 2023 CPRA considers a conflict-of-interest situation as an exception to the rule against refusal of representation of an indigent person, the same may not be blanketly invoked by the PAO, considering the express mandate of Section 22, Canon III of the 2023 CPRA.²⁵ The foregoing shall be exhaustively discussed in this Article.

B. The Social Justice Mandate of the PAO in Relation to Pertinent Constitutional Rights

As mentioned above, the PAO essentially serves “as the principal law office of the [g]overnment in extending free legal services to indigent persons in criminal, civil, labor, administrative[,] and other quasi-judicial cases.”²⁶ The “purpose and existence” of the PAO is anchored on providing

indigent litigants, the oppressed, marginalized, and underprivileged members of the society free access to courts, judicial and quasi-judicial agencies, by rendering legal services, counselling and assistance in consonance with the Constitutional mandate that ‘free access to courts shall not be denied to any person by reason of poverty’ *in order to ensure the rule of law, truth[,] and social justice as components of the country’s sustainable development.*²⁷

Thus, the thrust of the PAO is indubitably anchored on ascertaining that indigent persons are afforded free access to the courts, embedded in social justice.

The PAO has been described as having been established “to satisfy the constitutional mandate that free access to legal assistance shall not be denied to any person by reason of poverty,”²⁸ which is a right embraced in Section 11, Article III of the 1987 Constitution.²⁹ Furthermore, by the nature of its mandate of extending free legal services to the underprivileged, the operations of the PAO effectively guarantee the right to due process, as enshrined in

25. *Id.* canon V, § 3 & canon III, § 22.

26. Rules and Regulations Implementing R.A. No. 9406, rule II, § 4.

27. Elamparo, *supra* note 10, at 882-83 (citing Public Attorney’s Office, Mission and Vision, *available at* <https://pao.gov.ph/transparency/mission-and-vision> (last accessed Apr. 30, 2023) (emphasis supplied)).

28. Elamparo, *supra* note 10, at 883.

29. PHIL. CONST. art. III, § 11.

Section 1, Article III of the Constitution.³⁰ Ultimately, the services of the PAO become the avenue to afford indigent persons certain constitutional rights with respect to access to justice.

However, as will be threshed out in this Article, the conflict-of-interest rule — as adopted by the PAO’s relevant policies — seemingly creates a barrier to indigent persons receiving free legal services therefrom. This, in turn, may have ramifications on indigent persons exercising their rights protected by no less than the Constitution.³¹

II. THE CONCEPT OF CONFLICT OF INTEREST UNDER PHILIPPINE LAW AND JURISPRUDENCE

Conflict of interest has been a longstanding principle in legal ethics as enunciated in several cases decided by the Supreme Court, and has likewise formed part of the CPR and, in turn, the 2023 CPRA. In this part, the concept of conflict of interest under Philippine law and as explained by the Supreme Court in pertinent jurisprudence shall be delved into, particularly the legal framework thereof.

A. Conflict of Interest under CPR and Existing Jurisprudence

The concept of conflict-of-interest springs from the fiduciary relationship between a lawyer and his or her client. Indeed, the nature of a lawyer-client relationship is “one of trust and confidence of the highest degree.”³² With the adoption of the CPR, prevailing jurisprudence has likewise emphasized not only the highly confidential and fiduciary nature of attorney-client relationships but also the necessity and public interest involved in requiring the prohibition of conflicting interests. In *Pilar v. Atty. Ballicud*, the Court explained that the provision under Canon 1, Rule 1.02, in relation to Canon 15, Rule 15.03 of the CPR, which prohibits a lawyer from representing conflicting interest, is precisely to “preserve this fiduciary relationship and protect the public’s trust in the legal system,”³³ thus —

30. Elamparo, *supra* note 10, at 883 & PHIL. CONST. art. III, § 1.

31. *See* PHIL. CONST. art. III, § 11.

32. *Samson v. Era*, A.C. No. 6664, 701 SCRA 241, 252 (2013) (citing *Perez v. De La Torre*, A.C. No. 6160, 485 SCRA 547, 551 (2006)).

33. *Pilar*, 962 SCRA at 421.

To preserve this fiduciary relationship and protect the public's trust in the legal system, a lawyer is prohibited from representing conflicting interests under Rule 1.02, Canon 1, in relation to Rule 15.03, Canon 15, of the CPR, thus:

Canon 1 - A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.

Rule 1.02. - A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

Canon 15 - A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his clients.

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.³⁴

Corollary to the foregoing provisions is the duty of a lawyer to ensure fidelity to his or her client under Canon 17 of the CPR, which provides that “[a] lawyer owes fidelity to the cause of his client and shall be mindful of the trust and confidence reposed in him.”³⁵ Moreover, Section 20 (e) of Rule 138 of the Rules of Court mandates a lawyer “[t]o maintain inviolate the confidence, and at every peril to himself, to preserve the secrets of his client”³⁶

It is of paramount importance in the administration of justice that clients are able to entrust their legal problems to their lawyers and, as a prerequisite thereto, lawyers should keep inviolate their client’s confidence and avoid any appearance of impropriety and double-dealing.³⁷ It is the duty of a lawyer to protect the interest and confidence of his client and, related thereto, not to represent an interest in conflict or inconsistent with the same. This duty “extends even beyond the end of his professional engagement with said client.”³⁸

34. *Id.* at 421-22.

35. Code of Professional Responsibility, canon 17.

36. 1997 LEGAL ETHICS, rule 138, § 20 (e).

37. *Pilar*, 962 SCRA at 416. *See also Perez*, 485 SCRA at 551.

38. *Parungao*, 935 SCRA at 258.

In *Samson v. Era*,³⁹ the Court expounded on other rationales for the prohibition against conflict of interest, as follows —

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

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 ... could be compromised.

Third, a client has a legal right to have the lawyer safeguard the client's confidential information 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

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 argumentation⁴⁰

The proscription against representing inconsistent interests of two or more opposing parties may be said to be the prevailing definition of conflict of interest. In *Burgos v. Atty. Bereber*,⁴¹ citing *Hornilla v. Salunat*,⁴² the Court described conflict of interest in this wise,

39. *Samson*, 701 SCRA.

40. *Samson*, 701 SCRA at 251 (citing 2 SUSAN R. MARTYN, ET AL., THE LAW GOVERNING LAWYER: NATIONAL RULES, STANDARDS, STATUTES, AND STATE LAWYER CODES § 121 (2011 ed.)).

41. *Burgos v. Bereber*, A.C. No. 12666, 934 SCRA 284 (2020).

42. *Hornilla v. Salunat*, A.C. No. 5804, 405 SCRA 220 (2003).

[t]here is conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties. The test is ‘whether or not in behalf of one client, it is the lawyer’s duty to fight for an issue or claim, but it is his duty to oppose it for the other client. In brief, if he argues for one client, this argument will be opposed by him when he argues for the other client.’ This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used. Also, there is conflict of interests if the acceptance of the new retainer will require the attorney to perform an act 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. Another test of the inconsistency of interests is whether 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.⁴³

In recent jurisprudence, the Court has consistently recognized three tests to determine whether a lawyer is guilty of violating the rules on conflict of interest under the CPR, as follows:

- (a) Whether a lawyer is duty-bound to fight for an issue or claim [on] behalf of one client and, at the same time, to oppose that claim for the other client;
- (b) Whether the acceptance of a new relation would prevent the full discharge of a 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; and
- (c) Whether a 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.⁴⁴

Under the first test, there is a conflict of interest if a lawyer represents both opposing parties in an action, such as when the argument of said lawyer for one client has to be opposed by that same lawyer in arguing for the other

43. *Burgos*, 934 SCRA at 292 (citing *Hornilla*, 405 SCRA at 223).

44. *See, e.g.*, *Home Guaranty Corporation v. Tagayuna*, A.C. No. 13131, Feb. 23, 2022, available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/21/68105> (last accessed Apr. 30, 2023); *Pilar*, 962 SCRA at 422-23; & *Burgos*, 934 SCRA at 292.

client.⁴⁵ This test is relatively straightforward as it involves the representation of and rendering of services for two opposing parties in a particular action. A classic example of the application of this test is the case of *Tiana v. Ocampo*,⁴⁶ wherein the Court held that Atty. Ocampo's acts of representing a client, while providing advice to another client, who was likewise the opposing party in the same case, is tantamount to representing conflicting interest and constitutes serious misconduct, thus —

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. Considering this criterion and applying it to the present administrative cases, we find no cogent reason to disturb the findings of the Solicitor General upholding the complaints against the *Respondent*. Indeed, the aforementioned acts of the respondent in representing Blaylock, and at the same time advising Tiana, the opposing party, as in the first administrative case, and once again representing Blaylock and her interest while handling the legal documents of another opposing party as in the second case, whether the said actions were related or totally unrelated, constitute serious misconduct. They are improper to the respondent's office as attorney.⁴⁷

Meanwhile, under the second test, there is conflict of interest “if the acceptance of a new relation or engagement will prevent the lawyer from faithfully performing his duties to a client.”⁴⁸ The case of *Pilar v. Ballicud* demonstrates the application of the second case.⁴⁹ In the case, Atty. Ballicud was found to be representing conflicting interests when he caused the registration of a certain EAT corporation and acted as its major stockholder and president, while still engaged as a legal counsel for KWP corporation engaged in the same line of business and industry as the former.⁵⁰ The Court opined that “Atty. Ballicud's new relation with EAT would prevent the full discharge of his duty of undivided fidelity and loyalty to KWP and would

45. *Parungao*, 935 SCRA at 259 (citing *Quiambao*, 468 SCRA at 9-11).

46. *Tiana v. Ocampo*, A.C. No. 2285, 200 SCRA 472 (1991).

47. *Id.* at 479.

48. *Home Guaranty Corporation*, A.C. No. 13131.

49. *Pilar*, 962 SCRA 414.

50. *Id.* 422-23.

invite suspicion of unfaithfulness or double-dealing in the performance of his duty.”⁵¹

In the *Pilar* case, the Court made heavy reference to the case of *Quiambao v. Bamba*,⁵² wherein the Court similarly opined that the situation therein passes the second test of conflict of interest when the erring lawyer therein acted as an incorporator, stockholder, and president of a security agency at the time he was still the legal counsel of another security agency.⁵³ Notably, in both cases, the Court emphasized that for the proscription against representation of conflicting interests to apply, an actual case or controversy is not required but rather, the important criterion is probability, and not certainty, of conflict.⁵⁴ Moreover, the Court stated that conflict of interest applies not only in situations wherein the lawyer represents opposing parties in the same action but likewise in situations where representation happens in unrelated actions.⁵⁵

Finally, under the third test, there is conflict of interest “if a lawyer, in a new relation, would be called upon to use against a former client any confidential information he has acquired through their connection or previous employment.”⁵⁶ As opposed to the two tests above, this test specifically applies to a situation wherein the professional relationship of a lawyer with a former client was already terminated when the lawyer was engaged by a new client.⁵⁷ For there to be conflict of interest under this third test, the Court stated that 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

51. *Id.* at 422.

52. *Quiambao*, 468 SCRA 1.

53. *Id.* at 13.

54. *See Pilar*, 962 SCRA at 424 & *Quiambao*, 468 SCRA at 13.

55. *Quiambao*, 468 SCRA at 11.

56. *Home Guaranty Corporation*, A.C. No. 13131.

57. *Id.* & *Parungao*, 935 SCRA at 259-60.

- (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.⁵⁸

Proof must be presented as regards the confidentiality of the communication since the same is not presumed by the mere fact of the relationship between the lawyer and the client.⁵⁹

B. Consent as Exception to the Prohibition of Conflict of Interest

The rule on conflict of interest under Rule 15.03, Canon 15 of the CPR expressly provides for an exception, thus: "A lawyer shall not represent conflicting interests *except by written consent of all concerned given after a full disclosure of the facts.*"⁶⁰ Indeed, there appears to be no conflict of interest if all concerned parties have given their written consent to the legal representation after full disclosure of the facts. In *Dy v. Atty. Cañete*,⁶¹ the Court referred to the foregoing as the *only* exception for the prohibition from representing conflicting interests, thus

[t]he only exception on the prohibition of representing conflicting interests is provided under Rule 15.03 Canon 15, CPR - if there is a *written consent from all the parties after full disclosure* - which is not present in this case. Thus, Atty. Cañete's representation of Jean without the written consent of Manel is a violation of Rule 15.03, Canon 15, CPR, warranting disciplinary action therefor.⁶²

Corollary to the above, Canon 21, Rule 21.02 of the CPR allows a lawyer to use any information acquired in the course of his engagement with a client, if the latter knowingly consents thereto. Thus, "A lawyer shall not, to the disadvantage of his client, use information acquired in the course of employment, nor shall he use the same to his own advantage or that of a third

58. *Home Guaranty Corporation*, A.C. No. 13131 & *Parungao*, 935 SCRA at 260.

59. *Parungao*, 935 SCRA at 261.

60. Code of Professional Responsibility, rule 15.03 (emphasis supplied).

61. *Dy, Jr. v. Cañete*, A.C. No. 11040, Sept. 7, 2022, available at <https://sc.judiciary.gov.ph/wp-content/uploads/2022/11/11040.pdf> (last accessed Apr. 30, 2023).

62. *Id.* at 4 (emphasis supplied).

person, unless the client with full knowledge of the circumstances consents thereto.”⁶³

C. Application of the Prohibition on Conflict of Interest to Organizations of Individual Lawyers

In *Anglo v. Valencia*,⁶⁴ the Court held certain members of a law firm administratively liable for violating the rule on conflict of interest when their law firm was engaged and represented complainant in a labor case, and after termination thereof, agreed to represent a new client in bringing a criminal case against the complainant, to wit —

In this case, the Court concurs with the IBP’s conclusions that respondents represented conflicting interests and must therefore be held liable. As the records bear out, respondents’ law firm was engaged and, thus, represented complainant in the labor cases instituted against him. However, after the termination thereof, the law firm agreed to represent a new client, FEVE Farms, in the filing of a criminal case for qualified theft against complainant, its former client, and his wife. As the Court observes, the law firm’s unethical acceptance of the criminal case arose from its failure to organize and implement a system by which it would have been able to keep track of all cases assigned to its handling lawyers to the end of, among others, ensuring that every engagement it accepts stands clear of any potential conflict of interest. As an organization of individual lawyers which, albeit engaged as a collective, assigns legal work to a corresponding handling lawyer, it behooves the law firm to value coordination in deference to the conflict of interest rule. This lack of coordination, as respondents’ law firm exhibited in this case, intolerably renders its clients’ secrets vulnerable to undue and even adverse exposure, eroding in the balance the lawyer-client relationship’s primordial ideal of unimpaired trust and confidence. Had such system been institutionalized, all of its members, Atty. Dionela included, would have been wary of the above-mentioned conflict, thereby impelling the firm to decline FEVE Farms’ subsequent engagement. Thus, for this shortcoming, herein respondents, as the charged members of the law firm, ought to be administratively sanctioned. Note that the Court finds no sufficient reason as to why Atty. Dionela should suffer the greater penalty of suspension. As the Court sees it, all respondents stand in equal fault for the law firm’s deficient organization for which Rule 15.03, Canon 15 and Canon 21 of the CPR had been violated. As such, all of them are meted with the same penalty of

63. Code of Professional Responsibility, rule 21.02.

64. *Anglo v. Valencia*, A.C. No. 10567, 751 SCRA 588 (2015).

reprimand, with a stern warning that a repetition of the same or similar infraction would be dealt with more severely.⁶⁵

The Court in the case above simply applied the second test of conflict of interest, which pertains to the acceptance of a new relation or engagement, whether in the same action or on totally unrelated cases, preventing the lawyer from faithfully performing his duties to a client.⁶⁶ As may likewise be gathered from the above jurisprudence, while law firms are engaged as a collective, there is a need to determine potential conflict of interest arising from individual lawyers when accepting engagements with different clients. This is because there may be a finding of conflict of interest if a law firm engages and represents two parties with inconsistent interests in the same or unrelated actions, regardless of whether the handling lawyers for said legal actions are the same or different.⁶⁷

Similarly, in *RODCO Consultancy and Maritime Services Corporation v. Villanueva*,⁶⁸ the Court found a violation of the rule prohibiting representation of conflicting interests when a law office engaged a new client and represented him in a case which said client filed against the former client of the law office, thus –

Respondent violated the rules on conflict of interest when his law office represented Icayan in a case the latter filed against RODCO. Even as respondent insists that his contract of service with RODCO had been terminated at that point, and while he was not the lawyer personally handling the case, it was his law firm – the law firm that bears his name – over which he presumably has some measure of control, that was representing Icayan in a case where respondent had previously acted as counsel for the RODCO.⁶⁹

On the other hand, in *Home Guaranty Corporation v. Tagayuna*,⁷⁰ the Court did not find any violation of the prohibition on conflict of interest by the law

65. *Id.* at 595.

66. *Id.* at 594.

67. *Id.* at 595.

68. *RODCO Consultancy and Maritime Services Corp. v. Concepcion*, A.C. No. 7963, June 29, 2021, available at <https://elibrary.judiciary.gov.ph/thebookshelf/howdocs/1/67558> (last accessed Apr. 30, 2023).

69. *Id.*

70. *Home Guaranty Corporation*, A.C. No. 13131.

firm therein after it found the application of the three tests discussed above wanting.⁷¹ It may be observed from this case that in determining the presence of conflict of interest, the Court simply treats a law firm as collective without regard to the handling lawyers for particular engagements where potential conflict of interests may arise, although administrative liabilities are personal and imposed upon the individual lawyers or members of the law firm.

D. Conflict of Interest under CPRA

On 11 April 2023, the Court *en banc* approved the 2023 CPRA, which provided significant updates to the CPR.⁷²

The 2023 CPRA provided significant updates on the provisions pertaining to conflict of interest. In particular, Section 13, Canon III provides a definition of conflict of interest as follows,

Section 13. *Conflict of interest.* — A lawyer shall not represent conflicting interests except by written informed consent of all concerned given after a full disclosure of the facts.

There is conflict of interest when a lawyer represents inconsistent or opposing interests of two or more persons. The test is whether [on] behalf of one client it is the lawyer's duty to fight for an issue or claim, but which is his or her duty to oppose for the other client.⁷³

Notably, the first statement of the above definition is similarly worded as Canon 15, Rule 15.03 of the CPR, which likewise included the exception of consent. Meanwhile, the succeeding statements in the above definition are based on the Court's previous pronouncements as regards conflict of interest.⁷⁴

As opposed to the CPR, the 2023 CPRA provides rules with regard to the prohibition against representing conflicting interests as regards current, prospective, and former clients, thus

71. *Id.*

72. See Office of the Court Administrator, Code of Professional Responsibility and Accountability, OCA Circular No 200-2023 (May 19, 2023).

73. SC Admin. Memo. No. 22-09-01-SC, canon III, § 13.

74. *Burgos*, 934 SCRA at 292 (citing *Hornilla*, 405 SCRA at 223).

Section 14. *Prohibition against conflict-of-interest representation; current clients.* — In relation to current clients, the following rules shall be observed:

- (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client unless:
 - (1) it is shown that the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
 - (2) the client is advised in writing of the desirability of seeking, and is given a reasonable opportunity to seek, the advice of another independent lawyer on the transaction; and
 - (3) the client gives written informed consent to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.
- (b) A lawyer shall not use confidential information relating to representation of a client without the client's written informed consent, except as permitted or required by law or the CPRA.
- (c) A lawyer shall not, by undue influence, acquire any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer such gift, directly or indirectly.
- (d) Unless with the written informed consent of the client and subject to the application of the sub judice rule, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.
- (e) A lawyer shall not accept compensation for representing a client from any person other than the client, unless:
 - (1) the client gives written informed consent;
 - (2) there is no interference with the lawyer's independence or professional judgment or with the lawyer-client relationship; or
 - (3) the information relating to representation of a client is protected as required by the rule on privileged communication.
- (f) A lawyer, who represents two or more clients in the same case, in case there is a settlement or plea-bargaining, shall disclose to all the clients

the existence and nature of all the claims or pleas involved and the participation of each client in the settlement or plea-bargaining.

- (g) A lawyer shall avoid testifying in behalf of the client, except:
 - (1) on formal matters, such as the mailing, authentication or custody of an instrument, and the like; or
 - (2) on substantial matters, in cases where the testimony is essential to the ends of justice, in which event the lawyer must, during the testimony, entrust the trial of the case to another counsel.

Section 17. *Prohibition against conflict-of-interest representation; prospective clients.* — In relation to prospective clients, the following rules shall be observed:

- (a) A lawyer shall, at the earliest opportunity, ascertain the existence of any conflict of interest between a prospective client and current clients, and immediately disclose the same if found to exist.
- (b) In case of an objection by either the prospective or current client, the lawyer shall not accept the new engagement.
- (c) A lawyer shall maintain the private confidences of a prospective client even if no engagement materializes, and shall not use any such information to further his or her own interest, or the interest of any current client.

Section 18. *Prohibition against conflict-of-interest representation; former clients.* — In relation to former clients, the following rules shall be observed:

- (a) A lawyer shall maintain the private confidences of a former client even after the termination of the engagement, except upon the written informed consent of the former client, or as otherwise allowed under the CPRA or other applicable laws or regulations, or when the information has become generally known.
- (b) A lawyer shall not use information relating to the former representation, except as the CPRA or applicable laws and regulations would permit or require with respect to a current or prospective client, or when the information has become generally known.
- (c) Unless the former client gives written informed consent, a lawyer who has represented such client in a legal matter shall not thereafter represent a prospective client in the same or related legal matter, where the prospective client's interests are materially adverse to the former client's interests.⁷⁵

75. SC Admin. Memo. No. 22-09-01-SC, canon III, §§ 14 & 17.

Moreover, the 2023 CPRA provides specific rules with respect to the application of the prohibition against conflict of interest to lawyers under particular circumstances, such as to law firms,⁷⁶ corporate lawyers,⁷⁷ legal services organizations,⁷⁸ and lawyers in government service.⁷⁹ A particular focus in this Article is Section 22, Canon III of the CPRA, which provides for the rule on conflict of interests in PAO, thus

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

A conflict of interest of any of the lawyers of the Public Attorney's Office incident to services rendered for the Office shall be imputed only to the said lawyer and the lawyer's direct supervisor. Such conflict of interest shall not disqualify the rest of the lawyers from the Public Attorney's Office from representing the affected client, upon full disclosure to the latter and written informed consent.⁸⁰

III. THE PUBLIC ATTORNEY'S OFFICE'S MANDATE, OPERATION, AND STANDARDS FOR ACCEPTANCE OF CLIENTS

The PAO is an autonomous and independent office serving under its mandate "as the principal law office of the [g]overnment in extending free legal services to indigent persons in criminal, civil, labor, administrative and other quasi-judicial cases."⁸¹ The State policy behind the establishment of the PAO may be seen through its development as an institution in the Philippine legal system. In this Part, a brief history of the PAO shall be discussed, alongside the powers, functions, and structure thereof. Furthermore, this Part shall likewise

76. *Id.* canon III, § 15.

77. *Id.* § 19.

78. *Id.* § 20.

79. *Id.* § 21.

80. *Id.* § 22.

81. Instituting the "Administrative Code of 1987" [ADMIN. CODE], bk. IV, tit. III, ch. 5, § 14 (1987) (as amended) & Rules and Regulations Implementing R.A. No. 9406, rule II, § 4.

delve into the standards observed by the same with respect to the acceptance of clients.

A. The Birth of the PAO

The PAO finds its earliest predecessor in the Agricultural Tenancy Commission (later renamed Tenancy Mediation Commission), which was first established in 1954 to provide free legal assistance to agricultural tenants,⁸² pursuant to the policy and purpose of the Agricultural Tenancy Act founded on the tenets of “fairness, justice[,] and equity.”⁸³ Corresponding with the reforms introduced by Republic Act No. 3844,⁸⁴ the Tenancy Mediation Commission was reorganized as the Office of the Agrarian Counsel to further strengthen the institution’s capacity to provide free legal services to agricultural tenants.⁸⁵

Through the enactment of President Decree No. 1 and Letter of Implementation No. 4, Series of 1972, the Office of the Agrarian Counsel was effectively replaced by the Citizens Legal Assistance Office (CLAO), which substantially expanded the services offered by its predecessors to include civil, criminal, administrative, and labor cases.⁸⁶ By virtue of the Administrative

82. Office of the President, Creating the Agricultural Tenancy Commission, Administrative Order No. 67, Series of 1954 [A.O. No. 67, s. 1954], para. 1 (Sept. 30, 1954).

83. *Id.* whereas cl. para. 1.

84. An Act to Ordain the Agricultural Land Reform Code and to Institute Land Reforms in the Philippines, Including the Abolition of Tenancy and the Channeling of Capital into Industry, Provide for the Necessary Implementing Agencies, Appropriate Funds Therefor, and for Other Purposes [AGRARIAN CODE], Republic Act No. 3844 (1963).

85. *Id.* ch. X.

86. Reorganizing the Executive Branch of the National Government [Integrated Reorganization Plan], Presidential Decree No. 1, pt. XXI, art. XIV, ch. I & Office of the President, Implementing the Abolition of the Office of the Agrarian Counsel, the Transfer of Applicable Appropriations, Records, Equipment Property and Necessary Personnel to the Bureau of Agrarian Legal Assistance under the Department of Agrarian Reform, and the Creation of the Citizens Legal Assistance Office Under the Department of Justice, Letter of Implementation No. 4, Series of 1972, ¶¶ 1 & 4 (Oct. 23, 1972).

Code of 1987 (Administrative Code), the CLAO was renamed as the Public Attorneys' Office.⁸⁷

B. The Power, Functions, and Structure of the PAO

On 23 March 2007, Republic Act No. 9406 or the *Act Reorganizing the Public Attorney's Office (PAO), Amending For the Purpose Pertinent Provisions of Executive Order No. 292, Otherwise Known as the "Administrative Code of 1987", as Amended, Granting Special Allowance to PAO Officials and Lawyers, and Providing Funds Therefor* (R.A. No. 9406) was enacted by the 13th Congress, which amended certain provisions of the Administrative Code with respect to the PAO. Relatedly, on 14 July 2008, the Implementing Rules and Regulations of R.A. No. 9406 were issued, in furtherance of the aforementioned law.

R.A. No. 9406 introduced amendments to the Administrative Code regarding several aspects of the PAO, including: (1) the powers and functions of the PAO; (2) the organizational structure thereof; and (3) the officers of the PAO.

I. The Powers and Functions of the PAO

The PAO is an "independent and autonomous" office under the Department of Justice, which is the principal law office of the government in providing free legal assistance to indigent persons,⁸⁸ vested with the power to independently discharge its mandate to render "legal representation, assistance, and counselling" to indigent clients, without any charge, in criminal, civil, labor, administrative, and other quasi-judicial proceedings.⁸⁹ Furthermore, the PAO, should the exigency of the service require, may be called upon by pertinent government authorities to render such service to other persons, subject to laws, rules, and regulations.⁹⁰

As such, the PAO partakes of a nature of the government's principal law office, which primarily operates to cater to indigent clients and provide free

87. ADMIN. CODE, bk. IV, tit. III, ch. 5, § 14.

88. *Id.* & Rules and Regulations Implementing R.A. No. 9406, rule II, § 4.

89. ADMIN. CODE, bk. IV, tit. III, ch. 5, § 14-A & Rules and Regulations Implementing R.A. No. 9406, rule II, § 5.

90. ADMIN. CODE, bk. IV, tit. III, ch. 5, § 14-A.

legal services therefor in various kinds of legal proceedings. Nonetheless, the PAO may likewise be required to provide legal services to other persons, should the proper government authority call upon the same to do so.

2. The Organizational Structure and Officers of the PAO

The PAO consists of the following constituent units: one Office of the Chief Public Attorney and two Deputy Chief Public Attorneys, who shall serve as Deputy Chief Public Attorney for Administration.⁹¹ Additionally, the PAO has six units under the Central Office: (1) the Administrative Service; (2) the Financial Planning and Management Service; (3) Special and Appealed Cases Service; (4) Legal Research Service; (5) Field Operations and Statistics Service; and (6) the Executive Support Staff (collectively, the “Line Divisions of the Central Office”).⁹²

The PAO likewise has Regional, Provincial, City, and Municipal District Offices.⁹³ Under the Implementing Rules and Regulations of R.A. No. 9406, there shall be a PAO Regional Office for each administrative region in the Philippines.⁹⁴ Such Regional Offices shall have Provincial Officers, City District Offices, and Municipal District Offices, if necessary.⁹⁵

The Chief Public Attorney serves as the head officer of the PAO, and is assisted by two Deputy Chief Public Attorneys.⁹⁶ The authority and

91. *Id.* bk. IV, tit. III, ch. 5, § 15 (1) & Rules and Regulations Implementing R.A. No. 9406, rule II, § 6 (a).

92. ADMIN. CODE, bk. IV, tit. III, ch. 5, § 15 (2) & Rules and Regulations Implementing R.A. No. 9406, rule III, § 6 (b).

93. ADMIN. CODE, bk. IV, tit. III, ch. 5, § 15 (3) & Rules and Regulations Implementing R.A. No. 9406, rule III, § 6 (c).

94. Rules and Regulations Implementing R.A. No. 9406, rule III, § 10.

95. *Id.*

96. ADMIN. CODE, bk. IV, tit. III, ch. 5, § 16 (2) & Rules and Regulations Implementing R.A. No. 9406, rule III, § 8.

responsibility of carrying out the mandate of the PAO and to discharge the powers and functions thereof are vested in the Chief Public Attorney.⁹⁷

The Office of the Chief Public Attorney includes his or her immediate staff, the Line Divisions of the Central Office, the Deputy Chief Public Attorneys, and the Regional, Provincial, City, and Municipal District Offices.⁹⁸ Relatedly, the Chief Public Attorney may designate a Deputy Chief Public Attorney for Administration in charge of the Line Divisions of the Central Office.⁹⁹

Meanwhile, the Regional Office of the PAO is headed by a Regional Public Attorney, who is assisted by an Assistant Regional Public Attorney.¹⁰⁰ Furthermore, Provincial Public Attorneys, City Public Attorneys, and Municipal District Public Attorneys shall be appointed by the President upon recommendation of the Secretary of the Department of Justice.¹⁰¹

Additionally, apart from the Chief Public Attorney and the Deputy Chief Public Attorney, the following form part of the Public Attorney positions under the PAO in highest to lowest ranks: (1) Public Attorney V; (2) Public Attorney IV; (3) Public Attorney III; (4) Public Attorney II; (5) Public Attorney I; (6) Associate Public Attorney II; and (7) Associate Public Attorney I.¹⁰²

As to the number of public attorneys, Section 7 of R.A. No. 9406 provides that there shall be a corresponding number of public attorney's positions at the ratio of one public attorney to an organized sala, alongside the corresponding administrative and support staff. The same shall be subject to available funding

97. ADMIN. CODE, bk. IV, tit. III, ch. 5, § 16 & Rules and Regulations Implementing R.A. No. 9406, rule III, § 8.

98. ADMIN. CODE, bk. IV, tit. III, ch. 5, § 16 & Rules and Regulations Implementing R.A. No. 9406, rule III, § 8.

99. Rules and Regulations Implementing R.A. No. 9406, rule III, § 8.

100. ADMIN. CODE, bk. IV, tit. III, ch. 5, § 16.

101. *Id.* See Rules and Regulations Implementing R.A. No. 9406, rule IV, § 17.

102. Rules and Regulations Implementing R.A. No. 9406, rule IV, § 16.

and the standards to be jointly determined by the Department of Budget and Management and the PAO.¹⁰³

C. Pertinent Rules on Acceptance of Clients by the PAO

In view of the nature of the PAO as the principal law office of the government mandated to extend free legal services to indigent persons, certain standards have been formulated to determine the qualification of a person for the legal services provided by the same.

While tests to determine the eligibility of an applicant to receive the free legal services offered by the PAO are clearly enunciated under the Implementing Rules and Regulations of R.A. No. 9406¹⁰⁴ and the 2021 Revised Public Attorney's Office (PAO) Operations Manual,¹⁰⁵ another material point for the eligibility of an applicant is borne by PAO Memorandum Circular No. 007-10, or otherwise known as the Code of Conduct for Public Attorneys and Employees of the Public Attorney's Office (PAO's Code of Conduct) and likewise by the 2021 Revised PAO's Operations Manual. This additional layer constitutes the prevention of representation of conflicting interests, which finds sheer relevance in this Article.

1. Indigency and Merit Tests

The free legal services of the PAO are made available to indigent persons, or their immediate family, in civil, criminal, labor, administrative, and quasi-judicial proceedings, provided that after evaluation of the case of the potential indigent person, it is determined that the interest of justice will be served.¹⁰⁶ Thus, the PAO must provide legal services to an applicant: (1) who is indigent; and (2) whose case is found to be meritorious.¹⁰⁷

On this point, the Implementing Rules and Regulations of R.A. No. 9406 provides the two tests for determining the eligibility of an applicant for

103. *Id.* rule III, § 15.

104. *Id.* rule VI, § 23.

105. 2021 Revised Public Attorney's Office Operations Manual, ch. II, art. 3.

106. Rules and Regulations Implementing R.A. No. 9406, rule III, § 22.

107. *Id.*

receiving the free legal services offered by the PAO: (1) the Indigency Test; and (2) the Merit Test.

As to the Indigency Test, the Implementing Rules and Regulations of R.A. No. 9406 made reference to PAO Memorandum Circular No. 18, Series of 2002, as amended, in determining the threshold for considering an applicant as an indigent person.¹⁰⁸ Subject to the amendments as deemed necessary by the Chief Public Attorney, the following are considered as indigent persons:

- (a) Those who reside in Metro Manila whose family income does not exceed ₱14,000.00;
- (b) Those who reside in other cities whose family income does not exceed ₱13,000.00; or
- (c) Those who reside in all other places whose family income does not exceed ₱12,000.00 a month.¹⁰⁹

Nonetheless, should the applicant own a parcel of land, the same shall not be a ground for the disqualification thereof from the free legal services extended by the PAO.

However, the Indigency Test was further amended by Article 3, Chapter II, of the 2021 Revised PAO's Operations Manual, which provides that based on recent surveys on the amount needed by an average Filipino family to buy their "food consumption basket" and to pay for their household and personal expenses, the following are considered as indigent persons:

- (a) Those who reside in cities or municipalities within the National Capital Region (NCR) and whose individual net income does not exceed ₱24,000.00 a month;
- (b) Those who reside in other cities outside NCR, and whose individual net income does not exceed ₱22,000.00 a month; or
- (c) Those who reside in municipalities outside NCR, and whose individual net income does not exceed ₱20,000.00 a month.¹¹⁰

108. *Id.* rule III, § 23.

109. *Id.*

110 2021 Revised Public Attorney's Office Operations Manual, ch. II, art. 3.

For purposes of the Indigency Test under the 2021 Revised PAO's Operations Manual, "income" excludes the pension of retirees, while "net income" shall refer to the basic income of the applicant, less the statutory and authorized deductions.¹¹¹

In a similar vein, the 2021 Revised PAO's Operations Manual reiterates that ownership of land does not disqualify an applicant from availing free legal services from the PAO.¹¹²

To prove the applicant's indigency, the same shall present the following:

- (1) the Latest Income Tax Return or pay slip, or other proof of net income;
- (2) Certificate of Indigency from the Department of Social Welfare and Development or the City/Municipal Social Welfare and Development Office with jurisdiction over the applicant's residence; or
- (3) Certificate of Indigency or No Income from the Office of the Punong Barangay/Barangay Chairperson with jurisdiction over the applicant's residence.¹¹³

As to the Merit Test, a case applied for by an applicant is deemed to be meritorious if an evaluation of the law and evidence reveals that the legal services provided by PAO "will assist, or be in aid of, or in furtherance of

111. 2021 Revised Public Attorney's Office Operations Manual, ch. III, art. 3. Under the same provision, "statutory deductions" refer to "withholding taxes, Government Service Insurance System, Social Security System, Pag-IBIG, Health Insurance and PhilHealth premiums, loan amortizations, and other deductions of similar nature, duly supported by written contracts." Furthermore, should the applicant derive income from "activities and transactions where no employer-employee relationship exists," the net income shall pertain to the gross income less allowable deductions pursuant to the pertinent provisions of the National Internal Revenue Code. *Id.*

112. *Id.*

113. *Id.* See also Rules and Regulations Implementing R.A. No. 9406, rule VI, § 24.

justice.”¹¹⁴ In such evaluation, the interests of the parties and those of the society must be taken into consideration.¹¹⁵ In this case, the PAO must accept the applicant.¹¹⁶

On the contrary, a case shall be considered unmeritorious if it appears from the evaluation of the law and evidence that: (1) “it has no chance of success;” (2) merely intended to harass or injure the opposing party; or (3) “to work oppression or wrong.”¹¹⁷ If the case is unmeritorious based on the foregoing standards, then the same must be declined by the PAO.¹¹⁸

Nonetheless, cases of defendants in criminal proceedings shall be deemed meritorious, in view of the constitutional presumption of innocence of the accused in criminal cases until otherwise proven.¹¹⁹ Likewise, the PAO may represent an indigent client notwithstanding the fact that the cause of action thereof is against a public officer, government office, agency, or instrumentality, as long as the case is meritorious, as mentioned above, provided that the case PAO would not be, in any way, exposed to an appearance of harassment, abuse, unfairness, or haste in instituting suits.¹²⁰

Furthermore, if the indigent applicant is the defendant or respondent in a civil and administrative case has filed before any judicial or quasi-judicial tribunal, the PAO shall provide legal assistance to such client, “notwithstanding the determination” as to whether the case is meritorious or not.¹²¹

114. 2021 Revised Public Attorney’s Office Operations Manual, ch. III, art. 2 & Implementing Rules and Rules and Regulations Implementing R.A. No. 9406, rule VI, § 25.

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. 2021 Revised Public Attorney’s Office Operations Manual, ch. III, art. 2 & Implementing Rules and Rules and Regulations Implementing R.A. No. 9406, rule VI, § 25.

121. *Id.*

2. Conflict of Interest

As mentioned earlier, apart from the Indigency and Merit Tests, another material point to be taken into consideration in determining the eligibility of an applicant to avail the services of the PAO is the avoidance of representing conflicting interests. While the pertinent provisions of the Administrative Code on the PAO, R.A. No. 9406, and the Implementing Rules and Regulations of R.A. No. 9406 are silent as to the standards with respect to conflict of interest, the 2021 Revised PAO's Operations Manual and PAO's Code of Conduct are instructive on this point.

Section 6 (B) (b) of the PAO's Code of Conduct expressly prohibits Public Attorneys "from representing conflicting interests," thus

Public Attorneys are strictly prohibited from representing conflicting interests. They shall therefore refrain from accepting, assisting or representing the opposing party of any of the Office's clients which could prejudice the latter's interest. Thus, once there appears to be a conflict of interest or a risk thereof, public attorneys shall immediately inform the client about the said conflict and cease to act for and in his behalf; and, refer the latter to a law office or any of the organizations providing free legal service.¹²²

Hence, drawing from the above-quoted provision of the PAO's Code of Conduct, the PAO is explicitly required to refrain from accepting clients that could result in a potential conflict of interest, such as the opposing party of any of PAO's clients.

In relation thereto, the PAO's Code of Conduct defines "conflict of interest" as referring "to the Office's representation at the same time of inconsistent interest of two or more opposing parties in the same case/s."¹²³

Furthermore, the 2021 Revised PAO's Operations Manual reiterates the ineligibility of applicants should there be conflicting interests. The 2021 Revised PAO's Operations Manual enumerates the cases wherein the PAO shall not extend legal assistance, and the same include situations "[w]here they would be representing conflicting interests."¹²⁴

122. PAO Memo Circ. No. 007, s. 2010, § 6 (B) (b).

123. *Id.* § 5 (f).

124. 2021 Revised Public Attorney's Office Operations Manual, ch. II, art. 8 (1).

Additionally, in the event that the PAO is “precluded from accepting the case under the conflict of interest rule,” the applicant with such case must be informed and advised to obtain legal services from a private counsel or legal aid organization.¹²⁵ Relatedly, withdrawal of representation by the PAO is deemed to be warranted in situations wherein “it becomes apparent” that the representation of a client “will result in conflict of interest,” in that “the adverse party had previously engaged the services of the PAO, and the subject matter of the litigation is related, directly or indirectly, to the services rendered to the adverse party.”¹²⁶

The conflict-of-interest rule being an additional layer of ineligibility that applicants must hurdle before qualifying to receive free legal services from the PAO can be readily gleaned from the rules for acceptance of cases thereof. For instance, the 2021 Revised PAO’s Operational Manual provides that the PAO may provisionally accept certain cases, pending the verification of the applicant’s indigency and evaluation of the merit of the case thereof, such as cases involving violence against women and their children under Sections 13 and 35 (b) of Republic Act No. 9262 or the *Anti-Violence Against Women and Their Children Act of 2004* (Anti-VAWC Act), “except where there is a conflict of interest.”¹²⁷

Additionally, part of the standard procedures of the PAO with respect to walk-in clients is referring applicants “to other public and/or free legal aid organization, and/or be duly advised to seek the legal assistance of a counsel of their own choice,” should such applicant not qualify “due to conflict of interest.”¹²⁸ Relatedly, where the PAO lawyer is appointed by the court to appear for an applicant or petitioner who filed an application or petition for a protection order under Section 9 of the Anti-VAWC Act, such PAO lawyer must accept the appointment.¹²⁹ Nonetheless, “in case of conflict of interest,” the handling PAO lawyer “shall withdraw appearance,” and proceed to “refer

125. *Id.* ch. IX, art. 3, § 2.

126. *Id.* ch. IX, art. 4, para. 6.

127. *Id.* ch. II, art. 4, para. 6.

128. *Id.* ch. V, art. 4, § 1 (B).

129. *Id.* ch. V, art. 4, § 2.

the applicant to other public and/or free legal aid organization, and advise the applicant of the right to seek services of a counsel of one's own choice.”¹³⁰

Moreover, while requests for advice or legal opinion are not subject to the Indigency Test, the PAO takes precautions to avoid a situation where affluent persons avail of its services, in circumvention of the “First Come, First Served” policy of the PAO and the conflict-of-interest rules.¹³¹

Clearly, the conflict-of-interest rule becomes an additional layer of ineligibility for potential clients and/or applicants for the free legal services provided by the PAO. The principle of conflict of interest as defined under PAO's Code of Conduct is a material consideration in the PAO's operations as to acceptance and representation of clients, as can be gleaned from the 2021 Revised PAO's Operations Manual. In other words, apart from the longstanding standards of indigency and merit, the absence of conflict of interest must likewise be ascertained before accepting an applicant's case.

On this point, it is noteworthy that as defined in PAO's Code of Conduct, conflict of interest means that the PAO is representing, at the same time, inconsistent interests of two or more parties in the same case.¹³² A cursory reading thereof gives rise to the impression that the whole PAO — covering all of its lawyers occupying Public Attorney positions as enumerated above — is within the scope of the conflict of interest rule. This finds relevance in Section 22, Canon III of the 2023 CPRA, which limits the imputation of conflict of interest to the lawyer handling the specific case, and to his or her direct supervisor¹³³ — which is inconsistent with the existing policy of the PAO with respect thereto.

130. 2021 Revised Public Attorney's Office Operations Manual, ch. V, art. 4, § 2.

131. *Id.* ch. IX, art. 2.

132. PAO Memo Circ. No. 007, s. 2010, § 5 (f).

133. SC A.M. No. 22-09-01-SC, canon III, § 22.

IV. POTENTIAL ISSUES AS TO SECTION 22, CANON III OF THE 2023 CPRA

In Part II, conflict of interest, as a legal concept, was elaborated, through a survey of pertinent jurisprudence and an examination of its reference in the CPR and the 2023 CPRA. Meanwhile, in Part III, the conflict-of-interest rule being an additional layer of ineligibility of an applicant seeking to receive free legal services provided by the PAO was underscored. Nonetheless, the principles of conflict of interest under Philippine law and jurisprudence, and the operation of the conflict-of-interest rule as a bar to the eligibility of potential clients of the PAO raise certain issues when juxtaposed with the amendments introduced by Section 22, Canon III of the CPRA.

A. Apparent Inconsistency Between Section 22, Canon III of the 2023 CPRA and the Principles of Conflict of Interest

As discussed in Part II, conflict of interest is borne by the fiduciary relationship between a lawyer and his or her client, amid their relationship characterized by trust and confidence to an exceptional degree.¹³⁴ Furthermore, in Part II, the three tests in determining whether a lawyer is in violation of the rules on conflict of interest as enshrined in the CPR, as recognized by no less than the Supreme Court, were enumerated:

- (1) Whether a lawyer is duty-bound to fight for an issue or claim on behalf of one client and, at the same time, to oppose that claim for the other client;
- (2) Whether the acceptance of a new relation would prevent the full discharge of a 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; and
- (3) Whether a 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.¹³⁵

Nonetheless, an exception to the conflict-of-interest rule lies in consent — in that if all the parties concerned give their express written consent, after

134. *Samson*, 701 SCRA at 252 (2013) (citing *Perez*, 485 SCRA at 551 (2006)).

135. See, e.g., *Home Guaranty Corporation*, A.C. No. 13131; *Pilar*, 962 SCRA at 422-23; & *Burgos*, 934 SCRA at 292.

a full disclosure of the facts, no conflict of interest must be imputed to the lawyer.¹³⁶

Relatedly, conflict of interest must likewise be applied in the context of organizations of individual lawyers. In several cases decided by the Supreme Court, members of a law firm were found to be liable for violating the conflict-of-interest rule.¹³⁷ In doing so, the Supreme Court applied the appropriate test to determine whether conflict of interest exists.

The foregoing principles seem to be inconsistent with the declaration in Section 22, Canon III of the 2023 CPRA.

First, based on the clear wording of Section 22, Canon III of the 2023 CPRA, the rest of the lawyers from the PAO shall not be disqualified from representing the affected client, the conflict of interest only being imputed to the lawyer and his or her direct supervisor, provided that full disclosure to the affected client is made and written informed consent is obtained therefrom.¹³⁸ Nonetheless, based on prevailing jurisprudence, consent, as an exception to the conflict-of-interest rule, must be obtained from all concerned parties.¹³⁹

To recall, the pertinent portion of Section 22, Canon III of the 2023 CPRA is as follows —

A conflict of interest of any of the lawyers of the Public Attorney's Office incident to services rendered for the Office shall be imputed only to the said lawyer and the lawyer's direct supervisor. Such conflict of interest *shall not disqualify the rest of the lawyers from the Public Attorney's Office from representing the affected client, upon full disclosure to the latter and written informed consent.*¹⁴⁰

A cursory reading of the above-quoted provision immediately gives rise to the impression that in the event that there exists conflict of interest as to the potential client applying for free legal services of the PAO, the rest of the lawyers thereof (to the exclusion of the handling lawyer of the party with conflicting interest and his or her direct supervisor) shall not be disqualified

136. Code of Professional Responsibility, rule 15.03.

137. *See, e.g., Anglo*, 751 SCRA 588 & *RODCO Consultancy and Maritime Services Corp.*, A.C. No. 7963.

138. SC A.M. No. 22-09-01-SC, canon III, § 22.

139. *Dy, Jr.*, A.C. No. 11040, at 4.

140. SC A.M. No. 22-09-01-SC, canon III, § 22 (emphasis supplied).

provided that: (i) full disclosure is made to the affected client to be represented; and (ii) the written informed consent of the affected client to be represented is obtained.

However, while full disclosure to the affected client to be represented must be made and the written informed consent thereof must be obtained in cases of conflicting interests, Section 22, Canon III of the 2023 CPRA is silent as to the other party with conflicting interest with the affected client to be represented by the PAO.¹⁴¹ This is ostensibly inconsistent with doctrines laid down in pertinent jurisprudence, i.e. that written consent from all the parties after disclosure must be obtained to operate as an exception to the conflict of interest rule.¹⁴²

On this point, it bears emphasis that Section 13, Canon III of the 2023 CPRA likewise requires the “written informed consent of all concerned given after a full disclosure of the facts.”¹⁴³ While this may be understood to generally apply in conflict of interest situations involving indigent client’s application for legal services of the PAO, the same does not expressly appear in Section 22, Canon III of the 2023 CPRA.¹⁴⁴ Thus, there may be a risk as to the interpretation thereof with respect to situations involving conflict of interest in cases of indigent clients and the PAO, notwithstanding the longstanding principle that a special law must be considered to “constitute an exception to, or a qualification of, the general act or provision.”¹⁴⁵

Second, and related to the foregoing, a perusal of Section 22, Canon III of the 2023 CPRA only limits the bar from disqualification on the ground of conflict of interest—upon full disclosure to the affected client to be represented by the PAO and upon obtaining the written informed consent thereof—with the other lawyers of the PAO.¹⁴⁶ Such bar from disqualification, when the requirements therefor are met, seemingly does not

141. See SC A.M. No. 22-09-01-SC, canon III, § 22.

142. See *Dy, Jr.*, A.C. No. 11040, at 4.

143. SC A.M. No. 22-09-01-SC, canon III, § 13.

144. *Id.*

145. *Social Justice Society (SJS) v. Atienza, Jr.*, G.R. No. 156052, 545 SCRA 92, 132 (2008).

146. SC A.M. No. 22-09-01-SC, canon III, § 22.

extend to the direct supervisor of the lawyer that assisted the other party with conflicting interests with the affected client to be represented by the PAO.

As extensively discussed in Part II and as reiterated earlier, the Supreme Court categorically held that the written consent of all concerned parties after a full disclosure of the facts serves as *the only exception* for the prohibition from representing clients with conflicting interests.¹⁴⁷ Thus, should all parties concerned, after full disclosure of all the facts thereto, give their written informed consent, all lawyers of the PAO, as far as practicable, should be released from the prohibition to represent either client on the ground of conflict of interest. Nonetheless, based on the language of Section 22, Canon III of the 2023 CPRA, such “cure” from disqualification on the ground of conflict of interest shall apply to the rest of the lawyers of the PAO, necessarily excluding the handling lawyer and his or her direct supervisor.¹⁴⁸

Notwithstanding the potentially absurd situation wherein the handling lawyer of one party represents another client with conflicting interests, based on prevailing doctrines in pertinent jurisprudence, such lawyer, including his or her direct supervisor must be released from such prohibition after full disclosure to all parties and obtaining the written informed consent thereof. However, Section 22, Canon III of the 2023 CPRA appears to exclude the handling lawyer and his or her direct supervisor from this exception, which is incongruent with the consent exception provided for in jurisprudence.¹⁴⁹ Instead, Section 22, Canon III of the CPRA seemingly imputes conflict of interest, should the same exist, to the lawyer and his or her direct supervisor without any exception as to consent.¹⁵⁰

Third, as mentioned in Part II, while law firms are engaged as a collective, there needs to be a distinct determination of the existence of conflict of interest arising from individual lawyers, taking into consideration the three tests in determining whether conflict of interest exists. On this point, it must be underscored that the PAO serves as the principal law office of the government

147. *See Dy, Jr.*, A.C. No. 11040, at 4.

148. SC A.M. No. 22-09-01-SC, canon III, § 22.

149. *Id.*

150. *Id.*

with respect to providing free legal services to indigent persons.¹⁵¹ Meanwhile, Section 22, Canon III of the 2023 CPRA only imputes conflict of interest to the handling lawyer of the PAO and his or her direct supervisor, barring the disqualification of the rest of the lawyers of the PAO on such ground.¹⁵²

In a case decided by the Supreme Court, the same held certain members of a law firm liable for violating the rule on conflict of interest.¹⁵³ In doing so, the Supreme Court considered the law firm's acceptance of the case against its previous client as "unethical," and that the same "arose from its failure to organize and implement a system by which it would have been able to keep track of all cases assigned to its handling lawyers, ensuring that every engagement it accepts stands clear of any potential conflict of interest."¹⁵⁴ Hence, a law firm must be able to assess whether a potential conflict of interest situation may arise from its individual lawyers, before accepting a case.

Drawing from the foregoing, the same standard must apply to the PAO, being the principal law office of the government extending free legal services to indigent persons.¹⁵⁵ Conflict of interest must be avoided not only with respect to the handling lawyer and his or her direct supervisor, but the absence thereof must be ascertained as to all the other lawyers of the PAO. However, the letter of Section 22, Canon III of the 2023 CPRA only limits the imputation of conflict interest to the handling lawyer and his or her direct supervisor.¹⁵⁶

While it is understood that the repealing clause of the 2023 CPRA considers "[a]ny resolution, circular, bar matter, or administrative order issued by or principle established in the decisions of the Supreme Court inconsistent" therewith are "deemed modified or repealed,"¹⁵⁷ it may be argued that the

151. See ADMIN. CODE, bk. IV, tit. III, ch. 5, § 14 & Rules and Regulations Implementing R.A. No. 9406, rule II, § 4.

152. SC A.M. No. 22-09-01-SC, canon III, § 22.

153. *Anglo*, 751 SCRA at 595.

154. *Id.*

155. See ADMIN. CODE, bk. IV, tit. III, ch. 5, § 14 & Rules and Regulations Implementing R.A. No. 9406, rule II, § 4.

156. SC A.M. No. 22-09-01-SC, canon III, § 22.

157. *Id.* gen. provisions, § 2.

existing principles of conflict of interest under prevailing jurisprudence are not *ipso facto* modified, in their entirety, by virtue of Section 22, Canon III of the 2023 CPRA. This is bolstered by the fact that such existing principles laid down in pertinent jurisprudence likewise relate and are consistent with other provisions of the 2023 CPRA.¹⁵⁸ Thus, an examination of the incongruity of Section 22, Canon III of the 2023 CPRA with the legal framework of the rule on conflict of interest under Philippine jurisprudence finds sheer importance, in light of its potential implications on the PAO's provision of legal services to indigent persons, and the latter's constitutional right to access to justice.

B. Section 22, Canon III of the 2023 CPRA's Effective Removal of a Layer of Ineligibility of Potential Clients from Obtaining Legal Assistance from the PAO and the Uncertainty of the Direct Supervisor Covered by Conflict of Interest

As identified in Part III, apart from the Indigency Test and the Merit Test, the existence of conflict of interest serves as an additional layer of ineligibility for potential clients and/or applicants for the free legal services provided by the PAO.¹⁵⁹ Furthermore, as clearly provided for in the PAO's Code of Conduct, conflict of interest pertains to a situation wherein the PAO is representing inconsistent interests of two or more parties at the same time.¹⁶⁰ The definition of conflict-of-interest in the PAO Code of Conduct gives the impression that the conflict-of-interest is imputed to the entire PAO, i.e., all lawyers thereof.

Relatedly, under the 2021 Revised PAO's Operations Manual, the PAO is prohibited from accepting cases where conflict-of-interest is present,¹⁶¹ and in some cases, withdrawal of representation is deemed warranted when there exists conflict of interest.¹⁶²

Nonetheless, Section 22, Canon III of the 2023 CPRA explicitly mandates the PAO to "ensure ready access to its services" in a way that would avoid

158. *See id.* canon III, § 13.

159. *See* 2021 Revised Public Attorney's Office Operations Manual, ch II, art. 4 (6) & 5 (9) & (11).

160. PAO Memo Circ. No. 007, s. 2010, § 5 (f).

161. 2021 Revised Public Attorney's Office Operations Manual, ch. IX, art. 3, § 2.

162. *Id.* ch. IX, art. 4, para. 6.

conflict of interest situations, rendering marginalized sectors of society “unassisted by counsel.” This principle borne by Section 22, Canon III of the 2023 CPRA may entail a paradigm shift for the PAO, given the fact that it currently “creates a strong presumption in favor of conflict of interest.”¹⁶³

Prior to the issuance of the 2023 CPRA, the PAO, on the basis of its standard procedures and the PAO’s Code of Conduct, may readily refuse acceptance of cases should there be conflict of interest. As a matter of fact, such refusal to accept an applicant premised on conflict of interest “is a normal occurrence” in the PAO.¹⁶⁴ Nonetheless, with the clear mandate of Section 22, Canon III of the 2023 CPRA, the PAO would now be expected to take measures to avoid potential conflict of interest, while ensuring accessibility of its services to indigent persons. Thus, Section 22, Canon III of the 2023 CPRA effectively diminishes conflict of interest as a layer of ineligibility of clients seeking legal assistance from the PAO.

Notably, amid the express provisions in Section 22, Canon III of the 2023 CPRA, which perceptibly limits the imputation of conflict of interest to the handling lawyer of the PAO and his or her direct supervisor, the same narrows down the application of conflict of interest in cases of potential clients of the PAO. The rest of the lawyers of the PAO shall not be disqualified or otherwise be constrained to refuse to accept a case that would give rise to a potential conflict of interest situation. Hence, Section 22, Canon III of the 2023 CPRA effectively removes conflict of interest as a layer of ineligibility of potential clients of the PAO, which has been a material consideration in deciding whether the said office should extend legal assistance to the person applying for the same.

Simply put, prior to the promulgation of the 2023 CPRA, the PAO may plainly refuse to accept cases of potential clients if the former would be put in a situation wherein it would be representing conflicting interests.¹⁶⁵ If Section 22, Canon III of the 2023 CPRA would be faithfully observed, however, then the PAO could not simply refuse to extend legal assistance to potential clients on the basis of conflict of interest, considering the express pronouncement

163. Elamparo, *supra* note 10, at 904 (emphasis supplied).

164. *Id.* at 895.

165. See 2021 Revised Public Attorney’s Office Operations Manual, ch. II, art. 8 (1).

therein that conflict of interest “shall not disqualify the rest of the lawyers from the Public Attorney’s Office from representing the affected client.”¹⁶⁶

Hence, by virtue of Section 22, Canon III of the 2023 CPRA, the PAO should now exhaust measures skewed in favor of accepting clients, notwithstanding any potential conflict of interest situation, which shall only be imputed to the lawyer and his or her direct supervisor.¹⁶⁷ This likewise has implications on withdrawal of appearance in pending cases, which as it stands, may be done by the PAO lawyer should there be conflict of interest.¹⁶⁸

Furthermore, while Section 22, Canon III of the 2023 CPRA only imputes conflict of interest to such lawyer of the PAO affected thereby and to his or her direct supervisor, the designation of such direct supervisor seems to be rather unclear. In other words, it is uncertain, based on the reading of the aforementioned provision, who is considered as the “direct supervisor” to whom conflict of interest shall be imputed alongside the lawyer affected thereby.

As enumerated in Part III, the PAO is headed by the Chief Public Attorney and is assisted by two Deputy Chief Public Attorneys.¹⁶⁹ Relatedly, the Regional Office of the PAO is spearheaded by a Regional Public Attorney, assisted by an Assistant Regional Public Attorney.¹⁷⁰ Meanwhile, the Provincial Public Attorney, City Public Attorney, and Municipal District Public Attorney shall be appointed for the Provincial, City, and Municipal District Offices of the PAO, respectively.¹⁷¹ Relatedly, the Central Office of the PAO has six units, providing various services for the said office.¹⁷²

166. SC A.M. No. 22-09-01-SC, canon III, § 22, para. 2.

167. *Id.*

168. 2021 Revised Public Attorney’s Office Operations Manual, ch. V, art. 4, § 2.

169. ADMIN. CODE, bk. IV, tit. III, ch. 5, § 16 & Rules and Regulations Implementing R.A. No. 9406, rule III, § 8.

170. ADMIN. CODE, bk. IV, tit. III, ch. 5, § 16.

171. *See id.* bk. IV, tit. III, ch. 5, § 5.

172. ADMIN. CODE, bk. IV, tit. III, ch. 5, § 15 (2) & Rules and Regulations Implementing R.A. No. 9406, rule III, § 6 (b).

The PAO likewise has the following *plantilla* positions for its lawyers: (1) Chief Public Attorney; (2) Deputy Chief Public Attorney; (3) Public Attorney V; (4) Public Attorney IV; (5) Public Attorney III; (6) Public Attorney II; (7) Public Attorney I; (8) Associate Public Attorney II; and (9) Associate Public Attorney I.¹⁷³

Thus, there arises a question as to who among the above-enumerated PAO lawyers is considered as the “direct supervisor” to whom conflict of interest shall be imputed based on Section 22, Canon III of the 2023 CPRA.

While the designation of such direct supervisor, as referred to in Section 22, Canon III of the 2023 CPRA, vis-à-vis the internal structure of the PAO requires further confirmation, this Article shall discuss who may potentially be considered as the direct supervisor based on pertinent issuances of the PAO, alongside the possible impact thereof in case there exists conflict of interest.

It bears noting that some of the processes of the PAO require the approval of certain PAO officers. For instance, the transfer of cases must be duly approved by the Regional Public Attorneys, District Public Attorneys, or the Service Heads.¹⁷⁴ Additionally, Public Attorneys are required to submit periodical reports to the District Public Attorney or the Service Head.¹⁷⁵ Field lawyers and personnel shall likewise obtain prior written permission from the District Public Attorney for travels within such district, from the Regional Public Attorney for travels outside the district but within the region, and from the Chief Public Attorney for travels beyond the region where he or she is assigned.¹⁷⁶

More importantly, the 2021 Revised PAO’s Operations Manual expressly requires the signature of the handling lawyer and certain PAO officers in submissions filed before judicial and quasi-judicial tribunals, thus:

Section 5. Signature on Pleadings.— All complaints, petitions, answers, replies, and other important pleadings to be filed in the lower courts, quasi-

173. See Rules and Regulations Implementing R.A. No. 9406, rule IV, § 16 (“*plantilla*” positions are permanent positions in government, provided for by law).

174. 2021 Revised Public Attorney’s Office Operations Manual, ch. IX, art. 3, § 3 (B).

175. *Id.* ch. VII, art. 2.

176. *Id.* ch. IX, art. 3, § 6.

judicial bodies and other offices, must be signed by the lawyer handling the case and co-signed:

- (a) In the District Offices — by the District;
- (b) In the Regional Offices — by the Regional Public Attorney, or any senior lawyer in that Office designated by the former; and,
- (c) In the Central Office — by the Service Head or the senior lawyer designated by the former.¹⁷⁷

Thus, notwithstanding the following: (i) Public Attorneys being required to secure the approval of PAO officers identified in the 2021 Revised PAO's Operations Manual as to certain processes and submit periodical reports to such officers; and (ii) PAO officers co-signing the submissions to judicial and quasi-judicial tribunals alongside the lawyer handling the case, the “direct supervisor” referred to in Section 22, Canon III of the 2023 CPRA remains to be unclear.

Furthermore, it may be inferred from Section 5, Article 3, Chapter IX of the 2021 Revised PAO's Operations Manual, as quoted above, that the PAO officer heading the specific office, or such senior lawyer as may be designated by the same, is the direct supervisor of the handling lawyer.¹⁷⁸ Nonetheless, should there be conflict of interest and the same is imputed to such direct supervisor (e.g. the District Public Attorney, the Regional Public Attorney, the Service Head, or such other senior lawyer designated by the foregoing), it may create an obscure situation wherein such direct supervisor is prohibited from working on the case handled by another lawyer—who is under his or her supervision—but is not disqualified from representing the client under Section 22, Canon III of the 2023 CPRA.

Ultimately, determining who is considered as the “direct supervisor” as contemplated in Section 22, Canon III of the 2023 CPRA is a necessary step in dealing with potential conflict of interest situations. The same has serious implications on ascertaining whether a lawyer of the PAO is disqualified from handling a case on the grounds of conflict of interest.

¹⁷⁷. *Id.* ch. IX, art. 3, § 5.

¹⁷⁸. 2021 Revised Public Attorney's Office Operations Manual, ch. IX, art. 3, § 5.

V. THE INTERSECTION OF CONFLICT-OF-INTEREST PRINCIPLES AND RULES, SECTION 22, CANON III OF THE 2023 CPRA, AND THE PAO'S MANDATE IN RELATION TO PERTINENT CONSTITUTIONAL RIGHTS

As exhaustively elaborated in Part IV, there are potential issues when the amendments introduced by Section 22, Canon III of the 2023 CPRA are intertwined with conflict-of-interest principles under Philippine law and jurisprudence, and with conflict of interest as an additional barrier to the eligibility of potential clients of the PAO. To address the issues identified therein, this part shall include the following: (i) an examination of Section 22, Canon III of the 2023 CPRA through the lens of existing conflict of interest principles under pertinent law and jurisprudence; (ii) the application of the legal framework of conflict of interest in the PAO's operations with respect to acceptance of cases vis-à-vis Section 22, Canon III of the 2023 CPRA; and (iii) analysis of the pertinent constitutional rights in relation to material ethical considerations and the PAO's pursuit to carry out its mandate embedded in social justice.

A. Section 22, Canon III of the 2023 CPRA as an Ostensible Limitation to Conflict-of-Interest Principles Under Philippine Law and Jurisprudence

As evident from the survey of jurisprudence provided in Part II, the Supreme Court takes into great consideration the factual circumstances surrounding each case when determining whether there is conflict of interest, subject to the principles and standards it has formulated such as, for instance, the three tests for the determination of conflict-of-interest prevalently being used in more recent jurisprudence. Simply stated, the determination of conflict-in-interest is on a case-to-case basis. The Supreme Court does not impute conflict-of-interest upon a lawyer on the basis of the mere presence of a relationship between such lawyer and his client. It goes to the extent of determining whether such relationship “would prevent the full discharge of lawyer’s duty of undivided fidelity and loyalty” or “invite suspicion of unfaithfulness or double dealing” or would call upon such lawyer to disclose confidential information, among other conflict-of-interest standards.¹⁷⁹

Contrary to the foregoing principles, standards, and tests under jurisprudence, Section 22, Canon III of the 2023 CPRA provides for an

179. See, e.g., *Home Guaranty Corporation*, A.C. No. 13131; *Pilar*, 962 SCRA at 422-23; & *Burgos*, 934 SCRA at 292.

imputation of conflict of interest for the handling lawyer of the PAO and his or her direct supervisor. To recall, Section 22, Canon III of the 2023 CPRA provides that “[a] conflict of interest of any of the lawyers of the Public Attorney’s Office incident to services rendered for the Office *shall be imputed only to the said lawyer and the lawyer’s direct supervisor.*”¹⁸⁰ The foregoing provision appears to provide an automatic imputation of conflict of interest on the basis of the presence of the mere relationship between the handling lawyer or the direct supervisor and the existing clients of the PAO, even without a prior determination of whether such conflict of interest indeed exists based on the standards and tests provided in jurisprudence.

Moreover, Section 22, Canon III of the 2023 CPRA provides that the rest of the lawyers from PAO representing the affected client shall not be disqualified based on conflict of interest, provided that full disclosure to and written informed consent of the client is obtained.¹⁸¹ Notably, this exception on full disclosure and written informed consent has already been established in Rule 15.03, Canon 15 of the CPR¹⁸² and prevailing jurisprudence¹⁸³ and merely carried over under Section 13, Canon III of the 2023 CPRA.¹⁸⁴ However, Section 22, Canon III of the 2023 CPRA expressly limits the applicability of this exception in cases being handled by PAO, considering that it appears that the handling lawyer and the direct supervisor are barred from representing conflicting interests even if clients provide their consent thereto.¹⁸⁵

From the foregoing, it appears that the 2023 CPRA provides limitations with respect to the conflict-of-interest principles and tests duly established in jurisprudence, particularly with respect to its application to the cases being handled by PAO. In particular, Section 22, Canon III of the 2023 CPRA limits the applicability of conflict-of-interest rules only with respect to the

180. SC A.M. No. 22-09-01-SC, canon III, § 22, para. 2 (emphasis supplied).

181. *Id.*

182. Code of Professional Responsibility, rule 15.03.

183. *Dy, Jr.*, A.C. No. 11040, at 4.

184. SC A.M. No. 22-09-01-SC, canon III, § 13.

185. *Id.* canon III, § 22, para. 2.

handling lawyers and direct supervisors and effectively releases other PAO lawyers from disqualification by virtue of conflict of interest.

The basis for the limitations, however, remains vague. In particular, it is unclear whether these limitations are based on a supposed substantial distinction between the handling lawyer or direct supervisor and other PAO lawyers, and between PAO lawyers and other practicing lawyers in general. Nevertheless, a reading of the 2023 CPRA would reveal that the Supreme Court indeed aims to limit the applicability of the rules on conflict-of-interest only to handling lawyers in an organization, such as legal services organization, and effectively releases other lawyer-members of such organizations from conflict of interest. Section 20, Canon III, of the 2023 CPRA provides

Section 20. Legal services organization; conflict of interest — A legal services organization is any private organization, including a legal aid clinic, partnership, association, or corporation, whose primary purpose is to provide free legal services.

A lawyer-client relationship shall arise only between the client and the handling lawyers of the legal services organization. All the lawyers of the legal services organization who participated in the handling of a legal matter shall be covered by the rule on conflict of interest and confidentiality.¹⁸⁶

However, this limitation on the imputation of conflict-of-interest to only the handling lawyers appears to be in conflict with existing jurisprudence on the application of rules pertaining to conflict of interest to organizations of individual lawyers such as law firms or offices. In cases involving organizations of individual lawyers, the Supreme Court treats a law firm as a collective and without due regard to the handling lawyers, such that there could be a finding of conflict of interest if a law firm engages and represents two parties with inconsistent interests in the same or unrelated actions, regardless of whether the handling lawyers for said legal actions are different.¹⁸⁷

From the foregoing, it appears that Section 13, Canon III of the 2023 CPRA provides for new rules and limitations with respect to the application of jurisprudential conflict-of-interest rules and principles to PAO lawyers. In particular, it imputes conflict of interest only to direct supervisors and handling lawyers, applies the consent exception only to handling PAO lawyers, and does not treat the PAO similarly to a law firm or other organizations of

186. *Id.* canon III, § 20.

187. *See Anglo*, 751 SCRA at 595 & *Home Guaranty Corporation*, A.C. No. 13131.

individual lawyers, wherein conflict of interest must be imputed not only to handling lawyers but also to all lawyers who are members of such firm or organization.¹⁸⁸

Nevertheless, in the absence of a clear showing of a substantial distinction between handling, supervisory, and non-handling lawyers, as well as between the PAO and other legal organizations, the existing rules and principles regarding conflict of interest as enunciated in several jurisprudence must remain applicable. In particular, while Section 22, Canon III of the 2023 CPRA imputes conflict of interest against the handling lawyers and their direct supervisors, such imputation must not lead to the automatic disqualification of the foregoing lawyers from accepting cases that might result in potential conflicting interests. For one, there should be a thorough assessment based on the standards and tests enshrined in jurisprudence to determine if there would indeed be a conflict-of-interest. Notably, even the Supreme Court applies three tests when determining if the lawyers of a legal organization or law firm commit a violation of the prohibition on conflict of interest.¹⁸⁹

Moreover, the exception of full disclosure and consent must similarly apply to the handling lawyers and their supervisors and not only the other lawyers of the PAO. This exception, after all, has been duly established in jurisprudence and is similarly provided in Section 13, Canon III of the 2023 CPRA.¹⁹⁰

In the end, the standards for conflict-of-interest must not be applied to all cases in a blanket manner. In other words, the same is not a one-size-fits-all mold that readily captures every tenet of a case that potentially involves conflict of interest. Verily, it must be applied on a case-to-case basis, taking into consideration the primary principle on which it is based — the fiduciary relationship between a lawyer and his or her client.

188. See generally *Anglo*, 751 SCRA 588 & *RODCO Consultancy and Maritime Services Corp.*, A.C. No. 7963.

189. See *Home Guaranty Corporation*, A.C. No. 13131.

190. SC A.M. No. 22-09-01-SC, canon III, § 20.

*B. Application of the Legal Framework of Conflict of Interest in PAO's Policy
Thereon vis-à-vis Section 22, Canon III of the 2023 CPRA*

While the PAO has its own independent policy on conflict of interest, the same shall be examined through the lens of the legal framework of conflict of interest under Philippine law and jurisprudence, and in relation to Section 22, Canon III of the 2023 CPRA.

To recall, the Supreme Court recognized in pertinent jurisprudence the three tests to determine whether a lawyer is in violation of the rule on conflict of interest.¹⁹¹ Furthermore, the universally accepted exception to the conflict-of-interest rule is the express written consent obtained from all the parties concerned, after a full disclosure of the facts.¹⁹² The existence of conflict of interest is likewise looked into in the context of organizations of individual lawyers, such as a law office.¹⁹³

Applying the foregoing in the policy of the PAO with respect to the rule on conflict-of-interest, the most crucial incongruence between PAO's current policy on conflict of interest and the legal framework of conflict of interest is the absence of any recognition on the part of the former that consent is an exception to the rule on conflict of interest.

While the PAO's Code of Conduct categorically defines conflict-of-interest¹⁹⁴ and expressly prohibits Public Attorneys "from representing conflicting interests,"¹⁹⁵ nowhere therein was it mentioned that in case of conflicting interests, the PAO lawyer may proceed to extend legal assistance provided that the express consent of all parties concerned is obtained upon full disclosure of all the facts.

In a similar vein, while the 2021 Revised PAO's Operations Manual precludes the PAO from extending legal services to a potential client in case of conflict of interest, no such exception — on the basis of consent — appears

191. *See, e.g., Home Guaranty Corporation*, A.C. No. 13131; *Pilar*, 962 SCRA at 422-23; & *Burgos*, 934 SCRA at 292.

192. Code of Professional Responsibility, rule 15.03.

193. *See generally Anglo*, 751 SCRA 588 & *RODCO Consultancy and Maritime Services Corp.*, A.C. No. 7963.

194. PAO Memo Circ. No. 007, s. 2010, § 5 (f).

195. *Id.* § 6 (B) (b).

therein. Verily, the PAO implements a protocol as to its processes that conservatively veer away from cases or situations that may involve conflict of interest (e.g. advising the client to obtain legal services from another organization,¹⁹⁶ withdrawal of appearance in case of conflicting interest,¹⁹⁷ and prohibition on provisionally accepting cases under the Anti-VAWC Act “where there is a conflict of interest,”¹⁹⁸ among others).

As a matter of fact, “turning down an applicant” on the ground of conflict-of-interest has been “a normal occurrence” in the PAO, which happens even in situations wherein the PAO “merely referred the latter’s case to a fiscal or prosecutor.”¹⁹⁹

While obtaining the consent of all parties concerned is logistically burdensome, the truth remains to be that it is an exception to the conflict-of-interest rule widely recognized under Philippine law and jurisprudence, and potentially “cures” any controversy that may arise from a conflict-of-interest situation.

Thus, as Jeo Angelo Elamparo aptly pointed out in his article, *Implicated Rights and Neglected Duties in the Public Attorney’s Improper Invocation of Conflict of Interest for Indigent Litigants*, there is an immense discrepancy between how Philippine law and jurisprudence deal with the issue of conflict-of-interest than the PAO —

From the foregoing discussion, it is immediately clear how vastly different the laws and jurisprudence treat a question on conflict of interest than PAO. While PAO creates a strong presumption in favor of conflict of interest that is almost too strong to be overthrown, *laws and jurisprudence treat it otherwise by rejecting said presumption and requiring that an evaluation of the attorney-client relationship between the parties be first made.*²⁰⁰

Indeed, apart from the absence of recognition of consent as an exception to the rule on conflict-of-interest on the part of the PAO, its current policy thereon seemingly does not resort to the three tests in determining whether a lawyer is in violation of the rule on conflict-of-interest. Relatedly, Section 6

196. 2021 Revised Public Attorney’s Office Operations Manual, ch. IX, art. 3, § 2.

197. *Id.* ch. IX, art. 4, para. 6.

198. *Id.* ch. II, art. 4, para. 6.

199. Elamparo, *supra* note 10, at 895.

200. *Id.* at 904 (emphasis supplied).

(B) (b) of the PAO's Code of Conduct mandates that "once there appears to be a conflict of interest or a risk thereof," public attorneys, after promptly informing the client about such conflict of interest, must "cease to act for and in his behalf." This gives rise to the impression that an independent evaluation of the attorney-client privilege between the public attorney and the potential client as to the possibility of conflict of interest is not thoroughly undertaken prior to refusing such client, in stark contrast of the legal framework of conflict of interest under Philippine law and jurisprudence. As such, conflict of interest becomes a firm layer of ineligibility of potential clients from receiving legal assistance from the PAO.

This is where Section 22, Canon III of the 2023 CPRA finds sheer relevance. The aforementioned provision explicitly limits the imputation of conflict of interest to the lawyer and his or her direct supervisor and renders the rest of the lawyers of the PAO free from any disqualification on the ground of conflict of interest, provided that the written informed consent of the affected client is obtained upon full disclosure. Following Section 22, Canon III of the 2023 CPRA, the PAO shall no longer adhere to its "strong presumption" skewed towards conflict of interest as Elamparo described,²⁰¹ as long as the requirements enshrined in Section 22, Canon III of the CPRA are observed.

Nonetheless, as pointed out in Part IV (A), it bears noting that while Section 22, Canon III of the 2023 CPRA recognizes written informed consent as an exception to the rule on conflict of interest, the same merely requires the consent of the affected client to be represented, which is partly incongruent with the jurisprudential view that the same must be obtained from all concerned parties.²⁰² Relatedly, once such written informed consent is obtained, the lawyer and his or her direct supervisor must likewise be released from such prohibition on representing clients with conflicting interests, which seems to not be contemplated in Section 22, Canon III of the 2023 CPRA.

Furthermore, the current policy of the PAO as to conflict of interest is ostensibly inconsistent with pertinent jurisprudence with respect to organizations of individual lawyers, wherein any of the three tests to determine the existence of conflict of interest was applied. In the case of *Anglo v. Valencia*, the Supreme Court underscored the failure of the law firm subject therein to

201. *Id.*

202. *Dy, Jr.*, A.C. No. 11040, at 4.

“organize and implement a system by which it would have been able to keep track of all cases assigned to its handling lawyers, ensuring that every engagement it accepts stands clear of any potential conflict of interest.”²⁰³ However, amid PAO’s conservative approach to avoiding conflict of interest situations or the risk thereof, the same seemingly falls short of exhaustively and comprehensively determining conflict-of-interest, as a law office, with respect to its individual lawyers, and instead opts to refuse clients upon a finding of a semblance of conflict of interest.

However, as mentioned in Part IV (A), Section 22, Canon III of the 2023 CPRA is likewise seemingly inconsistent with relevant jurisprudence, as the same imputes conflict of interest only to the lawyer and his or her direct supervisor, to the exclusion of the rest of the public attorneys.

In sum, while the legal framework of conflict of interest under Philippine law and jurisprudence appears to be incongruent with the PAO’s conservative policy thereon, Section 22, Canon III of the 2023 CPRA ostensibly addresses the same by narrowing down the application of conflict of interest that would rather bar indigent clients from access to the legal services provided by the PAO. Nonetheless, taking into consideration the material points from Philippine law and jurisprudence, the PAO’s policy, and Section 22, Canon III of the 2023 CPRA, the same are not on all fours with each other, revealing the gaps in the realm of conflict of interest in the context of the PAO’s representation of clients.

C. Balancing of Constitutional Rights, Ethical Considerations, and Upholding the Social Justice Mandate of the PAO

To reiterate, the 2023 CPRA appears to provide an ostensible distinction between PAO lawyers and other lawyers in relation to the applicability of the rules on conflict-of-interest. It is unclear, however, whether there rests a substantial distinction between PAO and other legal organizations that would provide a reasonable basis for the difference in conflict-of-interest rules for PAO lawyers. Nevertheless, while a plain reading of the 2023 CPRA would not reveal the rationale behind the distinction, a closer examination of the PAO’s mandate would show that PAO lawyers may be considered as a different class on their own, providing for a reasonable basis for the distinction

203. *Anglo*, 751 SCRA at 595.

between PAO lawyers and other lawyers in relation to conflict-of-interest rules and principles.

As discussed above, the PAO is a government office created by virtue of law with the primary mandate of providing free legal assistance to indigent persons,²⁰⁴ and rendering “legal representation, assistance, and counselling” to indigent clients, without any charge, in criminal civil, labor, administrative, and other quasi-judicial proceedings.²⁰⁵ In essence, the PAO is a realization of the fundamental right of free access to the courts and adequate legal assistance for the poor and the marginalized, as enshrined under Section 11, Article III of the 1987 Constitution. This, in turn, relates to the right to due process, as provided for in Section 1, Article III of the Constitution, with respect to indigent persons being afforded the right to counsel, regardless of his or her socio-economic status.²⁰⁶

From the foregoing, unlike law firms and other legal organizations, the creation of PAO is imbued with public interest. Its core mandate and practices are likewise different from private law firms to the extent that the PAO helps implement the right of access to justice, which is “the most important pillar of legal empowerment of the marginalized sectors of the society.”²⁰⁷ Such mandate may provide a basis for the distinction between the PAO and other legal organizations.

The question remains, however, on whether Section 22, Canon III of the 2023 CPRA helps implement the PAO’s mandate to provide access to justice so as to provide a reasonable basis for the differences in conflict-of-interest rules between the PAO and other legal organizations. To answer this, there is a need to examine whether the new conflict-in-interest rules with respect to PAO would promote access to justice.

204. ADMIN. CODE, bk. IV, tit. III, ch. 5, § 14 & Rules and Regulations Implementing R.A. No. 9406, rule II, § 4.

205. ADMIN. CODE, bk. IV, tit. III, ch. 5, § 14-A & Rules and Regulations Implementing R.A. No. 9406, rule II, § 5.

206. Elamparo, *supra* note 10, at 883.

207. Re: Request of National Committee on Legal Aid to Exempt Legal Aid Clients from Paying Filing, Docket and Other Fees, A.M. No. 08-11-7-SC, 597 SCRA 350, 356 (2009).

To recall, in Section 6 (B) (b) of the PAO's Code of Conduct and the 2021 Revised PAO's Operations Manual, Public Attorneys are expressly prohibited from representing conflicting interests.²⁰⁸ The PAO's Code of Conduct defines "conflict-of-interest" as referring "to the Office's representation at the same time of inconsistent interest of two or more opposing parties in the same case/s."²⁰⁹ As previously discussed, this conflict-of-interest provision adds another layer of ineligibility for potential clients seeking the free legal services of the PAO, considering that part of the standard procedures of the PAO with respect to walk-in clients is determining whether an applicant would not qualify as a PAO's client due to conflict of interest, and referring such disqualified applicants to other public and/or free legal aid organization, and/or be duly advised to seek the legal assistance of a counsel of their own choice.²¹⁰

Relevantly, the PAO's Code of Conduct and the 2021 Revised PAO's Operations Manual do not limit the application of the rules on conflict of interest only to handling lawyers and their supervisors. Accordingly, applying the existing jurisprudence on the application of conflict of interest to law firms and organizations of individual lawyers, there is a basis for the PAO to apply the rules on conflict-of-interest to all Public Attorneys equally, such that there could be a finding of conflict of interest if the PAO, as a collective, engages and represents two parties with inconsistent interests in the same or unrelated actions, regardless if the handling lawyers for said legal actions are different.

Section 22, Canon III of the 2023 CPRA, in limiting the applicability of conflict of interest only to the handling lawyers and supervising lawyers, effectively reduces the layer of ineligibility for potential clients on the ground of conflict of interest, consequently making justice more accessible to the poor and marginalized. Accordingly, to the extent that Section 22, Canon III of the 2023 CPRA only seeks to complement the PAO's social justice mandate and the constitutionally guaranteed right of access to justice, the distinction provided therein between the PAO and other legal organizations may be considered to have a valid and reasonable basis.

208. PAO Memo Circ. No. 007, s. 2010, § 6 (B) (b) & 2021 Revised Public Attorney's Office Operations Manual, ch. II, art. 8 (1).

209. PAO Memo Circ. No. 007, s. 2010, § 5 (f).

210. 2021 Revised Public Attorney's Office Operations Manual, ch. V, art. 4, § 1 (B).

Moreover, the different application of conflicts of interest with respect to legal services to the indigent, as in the case of the PAO, is only proper because the interests involved are different than those involved in for-profit representation, such as private law firms: “The legal services attorney lacks the economic incentives to compromise client interests that conflict rules seek to protect.”²¹¹ Meanwhile, the most important interest of the legal services client is to be able to secure representation from the only available source.²¹² Indeed, a conflict of interest “can place legal services client in the position that only possible source of legal representation is unavailable due to the ethical constraints of the legal profession. In fact, the denial of representation due to a conflict of interest most often results in a denial of any representation for the legal service’s client.”²¹³

The right to free access to justice,²¹⁴ however, must still be balanced with other fundamental rights and principles sought to be protected by the prohibition on representing conflicting interests. It is worth stressing that the prohibition against conflict of interest is founded upon necessity and public interest, to ensure that a client is represented by a lawyer whom he can trust and to enhance the effectiveness of legal representation.²¹⁵ It is likewise put in place to safeguard the client’s confidential information and foster the public’s trust in the legal system as a whole.²¹⁶ In so far as the prohibition against conflict of interest is related to a lawyer’s duty of undivided fidelity and loyalty to his client, the conflict-of-interest rules similarly aim to uphold the right, especially of an accused, to a competent and independent counsel. The case *People v. Bermas*²¹⁷ is instructive on this point,

[t]he right to counsel must be more than just the presence of a lawyer in the courtroom or the mere propounding of standard questions and objections.

211. Taylor, *supra* note 11, at 619.

212. *Id.*

213. *Id.* at 577-78.

214. See PHIL. CONST. art. III, §§ 1, 11 & 12.

215. *Samson*, 701 SCRA at 251 (citing 2 SUSAN R. MARTYN, ET AL., THE LAW GOVERNING LAWYER: NATIONAL RULES, STANDARDS, STATUTES, AND STATE LAWYER CODES § 121 (2011 ed.)).

216. *Samson*, 701 SCRA at 251.

217. *People v. Bermas*, G.R. No. 120420, 306 SCRA 135 (1999).

The right to counsel means that the accused is amply accorded legal assistance extended by a counsel who commits himself to the cause for the defense and acts accordingly. The right assumes an active involvement by the lawyer in the proceedings, particularly at the trial of the case, his bearing constantly in mind of the basic rights of the accused, his being well-versed on the case, and his knowing the fundamental procedures, essential laws and existing jurisprudence. The right of an accused to counsel finds substance in the performance by the lawyer of his sworn duty of fidelity to his client. Tersely put, it means an efficient and truly decisive legal assistance and not a simple perfunctory representation.²¹⁸

From the foregoing, free access to justice must not only mean free and accessible legal assistance but must also provide “an efficient and truly decisive legal assistance,” which may be achieved in part through the performance of a counsel of his sworn duty of fidelity to his client, including avoiding any conflicting interests. This is where the limitation under Section 22, Canon III of the 2023 CPRA finds relevance. While said provision removes the layer of ineligibility for potential clients arising from conflicting interests, it does not absolutely remove the same. To recall, Section 22, Canon III of the 2023 CPRA still imputes conflict of interest to handling lawyers and their supervisors. This, in part, ensures that the lawyers who have a greater risk of representing conflicting interests by virtue of their possession of confidential information from existing clients are prohibited from representing potential clients whose interests may be adverse to said existing clients. Nevertheless, indigent clients whose interests may be adverse to or conflicting with the existing clients of the PAO are not automatically disqualified from availing the services of the PAO since their cases may be taken up by other PAO lawyers who are not the handling or supervising lawyer. This, in essence, upholds the PAO’s mandate and protects the right of free access to justice, while ensuring effective and independent legal assistance by avoiding conflicting interests.

218. *Id.* at 147-48 (1999).

VI. CONCLUSION

A plain reading of Section 22, Canon III of the 2023 CPRA would reveal several issues related to its apparent inconsistencies with prevailing rules, principles, and jurisprudence relating to conflict of interest. It appears that said provision aims to limit the applicability of the conflict-of-interest rule only to the PAO's handling lawyers and their supervisors, while effectively releasing other lawyers in the same organization from the disqualification by virtue of conflict of interest, provided that written consent of the affected client to be represented is secured upon full disclosure. This, however, seems to be inconsistent with prevailing jurisprudence, which applies standards and tests to determine conflict of interest on a case-to-case basis, among all the lawyers of a legal organization, whether such lawyer handles the client or case. It likewise limits the application of the consent exception to the conflict-of-interest prohibition only to non-handling lawyers, contrary to rules and principles provided in jurisprudence and the previous CPR, which likewise require the express consent of all concerned parties, and not just that of the affected client to be represented.

Interpreting Section 22, Canon III of the 2023 CPRA as a provision that balances the fundamental rights under the Constitution in relation to free access to justice, in furtherance of the PAO's mandate and the rights and principles sought to be protected by conflict-of-interest rules, may give light on the rationale and reasonable basis behind this new rule. However, the PAO still needs to re-evaluate and revise its existing rules and regulations in order to align with this new conflict-in-interest rule. On one hand, there is a need to define who the handling lawyers and "direct supervisors" are in order to ensure that leakage of confidential information and conflicting interests, in general, are avoided. On another hand, there is a need for the PAO to establish mechanisms to ensure that the clients are provided with effective and independent legal assistance, despite the lawyers of the PAO representing clients with conflicting and adverse interests in the event that such clients have given their consent thereto.