

EN BANC

[A.M. No. 21-06-20-SC. April 11, 2023]

**RE: DISTURBING SOCIAL MEDIA POSTS OF LAWYERS/LAW PROFESSORS,
D E C I S I O N**

PER CURIAM:

Antecedents

By Resolution^[1] dated June 29, 2021, the Court, *motu proprio*, required Atty. Noel V. Antay, Jr. (Atty. Antay, Jr.), Atty. Ernesto A. Tabujara III (Atty. Tabujara), Atty. Israel P. Calderon (Atty. Calderon), Atty. Morgan Rosales Nicanor (Atty. Nicanor) and Atty. Joseph Marion Peña Navarrete (Atty. Navarrete) to show cause why no administrative charges should be filed against them for the following Facebook posts:

SP Leon Yatna [Atty. Noel V. Antay, Jr.]

Just prosecuted and helped convict a member of the LGBTQA community for large scale estafa. The new convict then began cussing at me accusing me of being a bigot. A first for me. =)

The judge (who is somewhat effeminate) comes to my defense and warns the felon to behave.

All in a day's work. =) =) =)

Ernesto Tabujara III

Sino yung bakla na judge sa Taguig sa MTC sa first floor?
Naka eye liner and eye shadow pag nag hehearing. Ang taray pa!

SP Leon Yatna

Napromote na yon, Boss Ticky. RTC Judge na kaya yon. =) =) =)

Ernesto Tabujara III

The joke among lawyers is that sa Taguig sa 2nd floor puro may sira sa ulo mga judge, sa baba bakla at mga corrupt

SP Leon Yatna

No comment, Boss Ticky. May mga kaso pa ako doon eh. =) =) =)

Denden Calderon [Atty. Israel P. Calderon]

Baka type ka.

SP Leon Yatna

Bad ka, Prof. =)

Denden Calderon

SP Leon Yatna malay mo. Nakita n'ya intelligence mo given na good looks eh na convict mo pa s'ya. Tapos syempre di ka mapapasakamay n'ya kaya ayon imbyerna I. Charot haha.

SP Leon Yatna

Ang bad mo sakín, Prof =)

Morgan Nicanor

SP Leon Yatna oo tama. feel ko type ka bossing. hehehe.

SP Leon Yatna

Ay anak ng garapon. Dalawang Profs na. =) =) =)

Ernesto Tabujara III

Dapat kinurot mo! Charot!

Joseph Marion Navarrete

Morgan Nicanor natatandaan ko yung kliente mo dinala sa Ombudsman.

SP Leon Yatna

Kwento ka naman, Prosec Joseph =)

Joseph Marion Navarrete

Pinatawag lang ako ng Prof Morgan Nicanor mga panahon nayan. Tapos bitbit niya kliyente niya. Ang natatandaan ko lang is malagkit tingin kay papa, este Prof. Morgan.

SP Leon Yatna

Matikas kasi si Prof. Morgan eh, Habulin. =) ^[2]

Through his Compliance^[3] dated October 25, 2021, Atty. Antay, Jr. expressed his deep remorse and profound shame over the incident and extends his sincerest apologies for whatever anxiety and alarm that his posts might have caused. He further asserts that he could barely remember the posts and was only reminded of them when he saw screenshots that had begun circulating. He could no longer recover the posts through his social media account and he can only rely on the unauthenticated screenshots and the forwarded copy of this Court’s resolution (he had not yet been served a copy thereof). What makes the incident more perplexing is that his social media profile is locked and its contents cannot be accessed by outsiders. He has always been discreet and private in his personal dealings. He has no excuse about the incident and is mortified of how the breach occurred. He had no intention of disrespecting any magistrate or undermining the Judiciary. His posts did not single out or disparage anyone. His use of the phrase “*member of the LGBT community*” was merely descriptive, not disparaging nor disrespectful. The word “*effeminate*” was not used to describe a particular magistrate but merely to describe a non-antagonistic and non-threatening demeanor. He never dreams of discriminating against or disparaging any member of the Lesbian, Gay, Bisexual, Transsexual, Queer or Questioning, Intersex, Asexual, and more (LGBTQIA+) community. He even tried to politely put an end to the conversation by saying “*Bad ka.*”^[4]

In his Explanation^[5] dated October 6, 2021, Atty. Nicanor claimed that he only made a lone comment directed to “SP Leon Yatna” which read: “*SP Leon Yatna oo tama. Feel ko type ka bossing. Hehehe.*” He wholeheartedly apologizes to the Court for his lapse in judgment and lack of discernment for the lone comment. The statement was made in a playful banter and

in jest - he was making fun of one of the commenters. He never intended to malign, degrade, or debase any member of the Judiciary or the LGBTQIA+ community. He has been a lawyer for more than a decade and had never been subject of an administrative complaint. He is continually learning to improve himself as a lawyer and as a person. Part of that process is the realization that from time to time, he may have unintentionally offended anyone with his actuations.^[6]

Atty. Navarrete, in his Explanation^[7] dated October 7, 2021, claimed that he spent his elementary and high school years in an all boys school, where, at a young age, he was already exposed to members of the LGBTQIA+ community. Growing up, he has had relatives, friends, neighbors and acquaintances who were also LGBTQIA+. He has always treated everyone equally and never felt the need and pressure to discriminate against members of the LGBTQIA+ community. Even during his college years, he had classmates that were LGBTQIA+ and he treated them with respect. There were even times that he had to ally himself with the LGBTQIA+ community and *“had to befriends with them, even when they were shunned”* and looked down on. As a lawyer, he works with members of the LGBTQIA+ community and different socio-economic groups. In fact, some of his closest friends are LGBTQIA+ and are even godparents to his children.^[8]

He apologizes for not being sensitive enough. This is one of those circumstances where he may have committed a mistake via a playful comment and a joking repartee. While the comments he made may have multiple meanings and interpretations, the “naughty boy” in him may have impressed a dimple of disrespect on the members of the LGBTQIA+ community. The comments he made were not intended to malign, disrespect, debase or degrade the LGBTQIA+ community. As is, his comments had nothing to do with the LGBTQIA+ community. He was merely engaging in conversation about a past event and he did not even specify the sex or sexual orientation of the person they were talking about. Other than the posts he made, he has no personal knowledge about the matters posted about by the other respondents.^[9]

In his Comment^[10] dated November 7, 2021, Atty. Tabujara III avers he is a moderator of numerous online pages and forums and every post he makes is always made in good faith. He has been a practicing lawyer for more than 30 years and he has never been involved in any shenanigans nor made disrespectful or disparaging remarks about any judge, justice or prosecutor. He has always abided by the principles of legal ethics and have conducted himself as a lawyer to the best of his ability.^[11]

Though the posts portray him as an “*LGBT bigot*,” that is not who he is. He has LGBTQIA+ friends, colleagues and classmates with whom he has smooth and close relationships spanning decades. The jokes they tell to each other were not meant to insult or disparage anyone. On his DZRJ radio show “*Equal Justice*,” he has hosted LGBTQIA+ guests such as Lexter Victorio, who has executed a sworn affidavit^[12] on this fact. A long-time client, Ma. Nidzhen Salanguit-Angeles, who is also LGBTQIA+, attests^[13] that he has given advice to and made favorable posts for LGBTQIA+ individuals on Facebook. He is a strong supporter of the courts and the rule of law by actively participating and co-sponsoring activities in support thereof during his two terms as an officer of the Integrated Bar of the Philippines (IBP) - Quezon City.^[14]

By Resolution^[15] dated June 21, 2022, the Court referred the matter to the Office of the Bar Confidant (OBC) for investigation, report and recommendation.

Further, by Resolution^[16] dated July 26, 2022, Atty. Calderon was deemed served of the issuances from the Court.

Report and Recommendation of the OBC

By its Report and Recommendation^[17] dated August 31, 2022, the OBC recommended that the lawyers concerned be admonished. It noted that the lawyers’ comments show that the main topic of the online exchange were certain members of the LGBTQIA+ community and judges in Taguig City. Though no names were mentioned, the comments were made in a degrading and shameful manner. All those involved in the administration of justice, such as lawyers, must always conduct themselves with the highest degree of propriety and decorum. They should also exercise caution in avoiding incidents that tend to degrade the Judiciary and diminish the dignity, respect and regard for the courts. More, they should refrain from making remarks and conjectures that tend to ridicule a certain segment of the population such as the LGBTQIA+ community. Nonetheless, the lawyers concerned all apologized and appear to be remorseful. They even pleaded for mercy and expressed that they had no intention to disrespect any member of the Judiciary or the LGBTQIA+ community. Considering the foregoing, the lawyers should be admonished.^[18]

Issues

- 1) Can the erring lawyers invoke their right to privacy as a shield against administrative liability, if any?
- 2) What are the respective violations, if any, of the Code of Professional Responsibility (CPR) committed by Attys. Antay, Jr., Tabujara III, Calderon, Nicanor and Navarrete?

Ruling

Lawyers' right to privacy vis-à-vis online activities, not absolute

The lawyers' right to privacy, especially when it comes to their social media account, is limited. They cannot use this right as a shield against any liability. At best, the right to privacy has limited application to online activities of lawyers. On this score, *Belo-Henares v. Atty. Guevarra*^[19] (*Belo-Henares*) comprehensively explains:

Facebook is currently the most popular social media site, having surpassed one (1) billion registered accounts and with 1.71 billion monthly active users. *Social media* are web-based platforms that enable online interaction and facilitate users to generate and share content. There are various classifications of social media platforms and one can be classified under the "social networking sites" such as Facebook.

Facebook is a "voluntary social network to which members subscribe and submit information. x x x It has a worldwide forum enabling friends to share information such as thoughts, links, and photographs, with one another." Users register at this site, create a personal profile or an open book of who they are, add other users as friends, and exchange messages, including automatic notifications when they update their profile. A user can post a statement, a photo, or a video on Facebook, which can be made visible to anyone, depending on the user's privacy settings.

To address concerns about privacy, but without defeating its purpose, Facebook was armed with different privacy tools designed to regulate the accessibility of a user's profile, as well as information uploaded by the user. In *H v. W*, the South Gauteng High Court of Johannesburg, Republic of South Africa recognized this

ability of the users to “customize their privacy settings,” but with the cautionary advice that although Facebook, as stated in its policies, “makes every effort to protect a user’s information, these privacy settings are however not foolproof.”

Consequently, before one can have an expectation of privacy in his or her online social networking activity - in this case, Facebook - it is first necessary that said user manifests the intention to keep certain posts private, through the employment of measures to prevent access thereto or to limit its visibility. This intention can materialize in cyberspace through the utilization of Facebook’s privacy tools. In other words, utilization of these privacy tools is the manifestation, in the cyber world, of the user’s invocation of his or her right to informational privacy.^[20]
(*Emphasis supplied.*)

Belo-Henares then went on to explain why there is no assurance that posts on Facebook, or any social media platform for that matter, can be placed within the confines of privacy, *viz.*:

Moreover, even if the Court were to accept respondent’s allegation that his posts were limited to or viewable by his “Friends” only, there is no assurance that the same - or other digital content that he uploads or publishes on his Facebook profile - will be safeguarded as within the confines of privacy, **in light of the following:**

- Facebook “allows the world to be more open and connected**
- (1) by giving its users the tools to interact and share in any conceivable way;”**
 - (2) A good number of Facebook users “befriend” other users who are total strangers;**
 - (3) The sheer number of “Friends” one user has, usually by the hundreds; and**
A user’s Facebook friend can “share” the former’s post, or
 - (4) “tag” others who are not Facebook friends with the former, despite its being visible only to his or her own Facebook friends. (Emphasis supplied)**

Thus, restricting the privacy of one’s Facebook posts to “Friends” does not guarantee absolute protection from the prying eyes of another user who does not belong to one’s circle of friends. The user’s own Facebook friend can share said content or tag his or her own Facebook friend

thereto, regardless of whether the user tagged by the latter is Facebook friends or not with the former. Also, when the post is shared or when a person is tagged, the respective Facebook friends of the person who shared the post or who was tagged can view the post, the privacy setting of which was set at “Friends.” Under the circumstances, therefore, respondent’s claim of violation of right to privacy is negated.^[21]
(*Underscoring and emphases supplied.*)

In light of *Belo-Henares*, the Court cannot give credence to Atty. Antay, Jr.’s invocation of his right to privacy. His excuse – that his social media account is locked and the contents thereof cannot be accessed by outsiders – is a mere allegation at best. Allegations are not proof.^[22] Further, the fact that the exchanges leaked means that his social media account is not locked as he claims or that there is a rat amidst them.

At any rate, even granting veracity to Atty. Antay, Jr.’s allegations, no reasonable expectation of privacy arises in this case. It is settled that in ascertaining whether there is a violation of the right to privacy, the test is whether a person has a reasonable expectation of privacy and whether the expectation has been violated. This, in turn, entails a two-part test: (1) whether, by a person’s conduct, such individual has exhibited an expectation of privacy; and (2) this expectation is one that society recognizes as reasonable.^[23] On this score, *Belo-Henares* is clear: there can be no reasonable expectation of privacy as regards social media postings, regardless if the same are “locked,” precisely because the access restriction settings in social media platforms do not absolutely bar other users from obtaining access to the same.^[24]

***The lawyers’ duty to use
respectful language and
duty to observe due
respect for the courts
and its officers;
consequences of breach***

The applicable provision of the CPR is Rule 7.03, viz.:

Rule 7.03 – A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

Indeed, lawyers, as keepers of public faith, are burdened with a high degree of social responsibility and, hence, must handle their personal affairs with great caution.^[25] Citing anew *Belo-Henares v. Atty. Guevarra*,^[26] the Court suspended Atty. Roberto C. Guevarra for one year from the practice of law for his defamatory posts on Facebook. The Court noted his breach of Rule 7.03 in this wise:

By posting the subject remarks on Facebook directed at complainant and BMGI, respondent disregarded the fact that, as a lawyer, he is bound to observe proper decorum at all times, be it in his public or private life. He overlooked the fact that he must behave in a manner befitting of an officer of the court, that is, respectful, firm, and decent. Instead, he acted inappropriately and rudely; he used words unbecoming of an officer of the law, and conducted himself in an aggressive way by hurling insults and maligning complainant's and BMGI's reputation.

That complainant is a public figure and/or a celebrity and therefore, a public personage who is exposed to criticism does not justify respondent's disrespectful language. It is the cardinal condition of all criticism that it shall be bona fide, and shall not spill over the walls of decency and propriety. In this case, respondent's remarks against complainant' breached the said walls, for which reason the former must be administratively sanctioned.

"Lawyers may be disciplined even for any conduct committed in their private capacity, as long as their misconduct reflects their want of probity or good demeanor, a good character being an essential qualification for the admission to the practice of law and for continuance of such privilege. When the Code of Professional Responsibility or the Rules of Court speaks of conduct or misconduct, the reference is not confined to one's behavior exhibited in connection with the performance of lawyers' professional duties, but also covers any misconduct, which—albeit unrelated to the actual practice of their profession—would show them to be unfit for the office and unworthy of the privileges which their license and the law invest in them." Accordingly, the Court finds that respondent should be suspended from the practice of law for a period of one (1) year, as originally recommended by the IBP-CBD, with a stem warning that a repetition of the same or similar act shall be dealt with more severely.^[27] (Emphasis supplied)

Undoubtedly, inappropriate, disrespectful, and defamatory language of lawyers, even in the private sphere, are still within reach of this Court's disciplinary authority.

Members of the legal profession must respect LGBTQIA+ individuals' freedom to be themselves and express who they are, as part of their constitutionally-guaranteed right of freedom of expression. On this score, *Ang Ladlad LGBT Party v. COMELEC*^[28] expounds:

Freedom of expression constitutes one of the essential foundations of a democratic society, and this freedom applies not only to those that are favorably received but also to those that offend, shock, or disturb. Any restriction imposed in this sphere must be proportionate to the legitimate aim pursued. Absent any compelling state interest, it is not for the COMELEC or this Court to impose its views on the populace. Otherwise stated, the COMELEC is certainly not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one.

This position gains even more force if one considers that homosexual conduct is not illegal in this country. It follows that both expressions concerning one's homosexuality and the activity of forming a political association that supports LGBT individuals are protected as well.

Other jurisdictions have gone so far as to categorically rule that even overwhelming public perception that homosexual conduct violates public morality does not justify criminalizing same-sex conduct. European and United Nations judicial decisions have ruled in favor of gay rights claimants on both privacy and equality grounds, citing general privacy and equal protection provisions in foreign and international texts. To the extent that there is much to learn from other jurisdictions that have reflected on the issues we face here, such jurisprudence is certainly illuminating. These foreign authorities, while not formally binding on Philippine courts, may nevertheless have persuasive influence on the Court's analysis.

In the area of freedom of expression, for instance, United States courts have ruled that existing free speech doctrines protect gay and lesbian rights to expressive conduct. In order to justify the prohibition of a particular expression of opinion, public institutions must show that their actions were caused by "something more than a mere desire to avoid the discomfort and unpleasantness

that always accompany an unpopular viewpoint.”

x x x

We do not doubt that a number of our citizens may believe that homosexual conduct is distasteful, offensive, or even defiant. They are entitled to hold and express that view. On the other hand, LGBTs and their supporters, in all likelihood, believe with equal fervor that relationships between individuals of the same sex are morally equivalent to heterosexual relationships. They, too, are entitled to hold and express that view. However, as far as this Court is concerned, our democracy precludes using the religious or moral views of one part of the community to exclude from consideration the values of other members of the community.^[29] (Emphases supplied)

More, the Court reiterates that the Philippines adheres to the internationally-recognized principle of non-discrimination and equality. *CBEAI v. Bangko Sentral ng Pilipinas*^[30] is apropos:

The principle of equality has long been recognized under international law. **Article 1 of the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights.** Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitutes basic principles in the protection of human rights.

Most, if not all, **international human rights instruments** include some prohibition on discrimination and/or provisions about equality. The general international provisions pertinent to discrimination and/or equality are the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on *Economic, Social and Cultural Rights* (ICESCR); the International Convention on the Elimination of all Forms of Racial Discrimination (CERD); the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW); and the Convention on the Rights of the Child (CRC).

In the broader international context, **equality is also enshrined in regional instruments** such as the American Convention on Human Rights; the African Charter on Human and People’s Rights; the European Convention on Human Rights; the European Social Charter of 1961 and revised Social Charter of 1996; and the European Union Charter of Rights (of particular importance to European states). Even the Council of the League of Arab States has adopted the Arab Charter on Human Rights in 1994, although it has yet to be ratified by the Member States of the League.

The equality provisions in these instruments do not merely function as traditional “first generation” rights, commonly viewed as concerned only with constraining rather than requiring State action. Article 26 of the ICCPR requires “guarantee[s]” of “equal and effective protection against discrimination” while Articles 1 and 14 of the American and European Conventions oblige States Parties “to ensure ... the full and free exercise of [the rights guaranteed] without any discrimination” and to “secure without discrimination” the enjoyment of the rights guaranteed. These provisions impose a measure of **positive obligation** on States Parties to take steps to eradicate discrimination.^[31]

Clearly, the principles of non-discrimination and equality are deeply embedded in the Philippine system of laws. As such, every member of the legal profession is bound to observe and abide by them, especially when dealing with LGBTQIA+ individuals. Incidentally, any discriminatory act can be a source of civil liability as underscored in *Social Security System v. Ubaña*:^[32]

“That public policy abhors inequality and discrimination is beyond contention. Our Constitution and laws reflect the policy against these evils. The Constitution in the Article on Social Justice and Human Rights exhorts Congress to ‘give highest priority to the enactment of measures that protect and enhance the right of all people to human dignity, reduce social, economic, and political inequalities.’ The very broad Article 19 of the Civil Code requires every person, ‘in the exercise of his rights and in the performance of his duties, [to] act with justice, give everyone his due, and observe honesty and good faith.’”^[33]

We also reckon with *Falcis v. Civil Registrar General*,^[34] where the eminent Associate Justice, now Senior Associate Justice Marvic Mario Victor F. Leonen aptly noted:

“[t]hose with sexual orientations other than the heteronormative, gender identities that are transgender or fluid, or gender expressions that are not the usual manifestations of the dominant and expected cultural binaries—the lesbian, gay, bisexual, transgender, queer, intersex, and other gender and sexual minorities (LGBTQI+) community—have suffered enough marginalization and discrimination within our society.”

He also went on to highlight the severity of discriminatory acts inflicted on the LGBTQIA+ community in the Philippines, *viz.*:

A 2012 coalition report submitted by OutRight Action International, together with 40 Philippine LGBTQI+ and human rights group and 13 activists, to the 106th Session of the United Nations Human Rights Committee showed that from 1996 to 2012, 163 LGBTQI+ persons have been murdered due to their gender identity, gender expression, or sexual orientation. The report documented discriminatory acts against LGBTQI+ groups and persons both by State and non-State actors.

In 2016, EnGendeRights, Inc. and OutRight Action International, as with 34 Philippine groups and individuals, submitted a report to the Committee on the Elimination of Discrimination against Women. This report documented the lack of national anti-discrimination, gender recognition, and hate crime legislation, as well as cases of discrimination by police, health workers, educators, employers, and the judiciary against LGBTQI+ persons.

A more recent report submitted in 2017 by civil society organizations to the Universal Periodic Review of the United Nations Human Rights Council continued to document human rights violations against LGBTQI+ persons, including an existing legal framework inadequate to address systemic problems of discrimination and exclusion.

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Too, Section 2 of Republic Act No. 11313^[35] also known as the “*Safe Spaces Act*” explicitly states that: “*It is the policy of the State to value the dignity of every human person and guarantee full respect for human rights. It is likewise the policy of the State to recognize the role of women in nation-building and ensure the fundamental equality before the law of women and men. **The State also recognizes that both men and women must have equality, security and safety not only in private, but also on the streets, public spaces, online, workplaces and educational and training institutions.***”

Inappropriate, disrespectful, belligerent or malicious language can be a source of criminal liability under the Safe Spaces Act. Gender-based sexual harassment – encompassing transphobic and homophobic slurs – in streets and public spaces^[36] as well as online,^[37] may warrant progressive penalties ranging from community service, fines and imprisonment.

Verily, members of the legal profession may simultaneously incur administrative, civil and criminal liability on the basis of their language alone. It goes without saying that lawyers are held to a higher standard as they all took the Lawyer’s Oath by which they all committed to “*support the Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein.*”^[38]

Analogous cases and the corresponding administrative penalties under Rule 8.01 and Canon 11 under the CPR

In ascertaining the liability of lawyers for inappropriate and disrespectful language in their private dealings, the Court looks to analogous cases where lawyers, and even judges, were sanctioned for their inappropriate language in the discharge of their roles as either officers of the court or as magistrates, respectively.

Rule 8.01^[39] allows a lawyer to be forceful and emphatic in his or her language, but, it should always be dignified and respectful, befitting the dignity of the legal profession.^[40] On many occasions, the Court has reminded the members of the Bar to abstain from any offensive personality and to refrain from any act prejudicial to the honor or reputation of a party or a witness. In keeping with the dignity of the legal profession, a lawyer’s language even in his or her pleadings, must be dignified.^[41]

When it comes to language involving members of the LGBTQIA+ community, the Court had

sanctioned judges for offensive and impertinent language. In *Dojillo, Jr. v. Ching*,^[42] Judge Jaime Dojillo was admonished for his offensive language, viz.:

In the case of Judge Dojillo, he should be admonished to be more circumspect in his choice of words and use of gender-fair language. There was no reason for him to emphatically describe Concepcion as a “lesbian” because the complained acts could be committed by anyone regardless of gender orientation. His statements like “I am a true man not a gay to challenge a girl and a lesbian like her,” “the handiwork and satanic belief of dirty gossiper,” and “the product of the dirty and earthly imagination of a lesbian and gossiper” were uncalled for.

Being called to dispense justice, Judge Dojillo must demonstrate finesse in his choice of words as normally expected of men of his stature. His language, both written and spoken, must be guarded and measured lest the best of intentions be misconstrued.^[43] (Emphasis supplied)

In *Espejon v. Judge Loreda*,^[44] Judge Jorge Emmanuel M. Lorredo was found to have committed simple misconduct when he badgered litigants about their sexual orientation and used homophobic slurs^[45] during court proceedings and even in his comment to the administrative complaint against him. There, the Court pronounced:

The statements Judge Lorredo made during the preliminary conference, and especially in the Comment he filed in this case, are clearly tantamount to homophobic slurs which have no place in our courts of law. The fact that they were made by no less than a magistrate should be rightfully upset the Court and must perforce be penalized. It was not too long ago when the Court in *Ang Ladlad LGBT Party v. Commission on Elections* declared that “as far as this Court is concerned, our democracy precludes using religious or moral views of one part of the community to exclude from consideration the values of other members of the community.” Thus, it should come as a matter of course for all judges to desist from any word or conduct that would show or suggest anything other than inclusivity for the members of the LGBTQIA+ community. (Emphasis supplied)

Going now to analogous disciplinary measures meted under Canon 11,^[46] it is a lawyer's sworn duty to maintain a respectful attitude towards the courts.^[47] A lawyer must not sow hate or disrespect against the court and its members. He or she must be at the forefront in upholding its dignity.^[48] *Tiongco v. Hon. Aguilar*^[49] outlines the intricacies of a lawyer's obligation under Canon 11, viz.:

This duty is closely entwined with his vow in the lawyer's oath "to conduct himself as a lawyer with all good fidelity to the courts;" his duty under Section 20 (b), Rule 138 of the Rules of Court "[t]o observe and maintain the respect due to the courts of justice and judicial officers;" and his duty under the first canon of the Canons of Professional Ethics "to maintain towards the courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its incumbent of the judicial office, but for the maintenance of its supreme importance."^[50]

Indubitably, violation of Canon 11 warrants the imposition of an administrative penalty.

In *Judge Baculi v. Atty. Battung*,^[51] a lawyer was suspended for one year and sternly warned for publicly berating a judge and threatening the latter with an administrative complaint for gross ignorance of the law.

In *Go v. Court of Appeals*,^[52] two lawyers were individually fined and sternly warned for their disrespectful language^[53] against a judge in their pleadings.

In *Tiongco v. Hon. Aguilar*,^[54] a lawyer was fined and warned for his use of intemperate language in his petition before the Court.

In *Genato v. Mallari*,^[55] a lawyer who challenged a Court of Appeals Justice to a public debate after losing a case, was disbarred since his offense was already compounded by his other infractions in other incidents likewise involving justices and judges.

Verily, disrespectful and intemperate language by a lawyer may entail a warning, a fine, suspension and/or disbarment - depending on the severity of the offense.

***The respective administrative liabilities of
Attys. Antay, Jr., Tabujara III, Calderon,
Nicanor and Navarrete***

It is not a defense that the discriminatory language was uttered in what was seemingly intended to be private exchanges among the macho men. The fact that their exchanges became public trumps whatever intention they may have had to keep their communications private. Seekers of righteousness cannot seek cover under a pledge of anonymity when their actions are brought to light for everyone's scrutiny. Here, this was what happened. Unfortunately or fortunately, respondents' true character came to light. Their secret codes divulged. This was their undoing. Their conversations became public and have become a public proceeding by the turn of events, as if they were uttered in a public discourse such as a court hearing.

Atty. Antay, Jr. was the one who initiated the Facebook thread by stating that he had successfully prosecuted a case for estafa against a member of the LGBTQIA+ community. The convicted individual allegedly started cursing at him and accused him of being a bigot. He then narrated that the judge, whom he described as "*somewhat effeminate*" chastised the convict. Note that at the outset, Atty. Antay, Jr. began the conversation with homophobic undertones by emphatically describing the convict as a member of the LGBTQIA + community and the judge as effeminate. These descriptions are uncalled for and have no context in the narrative, thus, showing his gender bias.

Adding to the homophobic tone of the conversation, Atty. Tabujara III asked about a Metropolitan Trial Court judge, whom he described as "*bakla (gay)*," in Taguig City who wore eyeshadow and eyeliner. The judge was allegedly "*mataray pa (prickly demeanor)*." He then proceeded to say that the joke among lawyers is that in the Taguig Hall of Justice, judges in the second floor have "*sira ng ulo (not right in the head)*" while those in the first floor are homosexuals and corrupt.

Here, Atty. Tabujara III unduly put emphasis on the judge's gender expression by pointing out the wearing of eyeshadow and eyeliner - he said these things to unnecessarily underscore the judge's sexual orientation. Additionally, he made sweeping statements about the mental state of Taguig judges, thus, implying they are unfit to perform their duties. Worse, Atty. Tabuja III lumped the allegedly homosexual judges with the allegedly corrupt ones, thereby implying that homosexual judges have the same degree of immorality as those of corrupt judges. Undoubtedly, such sweeping, baseless and homophobic statements perpetuate the stereotype of homosexuality as a moral flaw and abomination that must be quashed.

Atty. Calderon chimed in, saying that there is a possibility that the convict may have been

attracted to Atty. Antay, Jr., that was why the convict cursed at him. Atty. Calderon hinted that the convict may have been frustrated at the thought that he could not *sexually* have (“*mapapasakamay*”) Atty. Antay, Jr.. Such statements by Atty. Calderon may seem innocuous at first glance, yet, in truth baselessly and demeaningly insinuate perverse intentions against a member of the LGBTQIA+ community. Atty. Calderon seemingly implies that the convict’s outburst at Atty. Antay, Jr. was rooted in his frustration on not having relations with or the affection of Atty. Antay, Jr.. Such statement tends to propagate and enforce an unfair and harmful stereotype regarding the sexual pinings of members of the LGBTQIA+ community. This, however, is not representative of the LGBTQIA+ individuals and, therefore, must be quelled. There is no room for such stereotypes in conversations among lawyers.

Atty. Nicanor agreed with Atty. Calderon by saying “[*Oo*] *tama. Feel ko type ka bossing (That’s right. I think you were the convict’s type).*” While he said nothing more, he, too, fortified the misleading stereotype painted by Atty. Calderon in his comment. Context shows his aggrecance to his colleagues’ malstatements.

Lastly, Atty. Navarrete recalled an incident involving Atty. Nicanor and a client at the Office of the Ombudsman. Atty. Navarrete narrated that Atty. Nicanor’s client looked at the latter in an admiring (“*malagkit*”) way. While there is no express hint of homophobia or disrespect in Atty. Navarrete’s comments, these comments nonetheless carry the same wrong and perverse undertones often pinned against LGBTQIA+ individuals. To stress, the Court cannot condone such improper conduct and language by respondents against the LGBTQIA+ community.

Based on the foregoing, the Court finds each of respondents guilty of breaching Rule 7.03 of the CPR.

Atty. Nicanor, Atty. Navarrete, Atty. Antay, Jr. and Atty. Calderon must answer for their intemperate language against the LGBTQIA+ community. Their fixation on the respective sexual orientations of their subjects was uncalled for and they should be more circumspect in their choice of words and be mindful of gender-fair language. Thus, Atty. Nicanor, Atty. Navarrete, Atty. Antay, Jr. and Atty. Calderon should be reprimanded, with stern warning that a repetition of the same or similar offense will be dealt with more severely. An admonition will not suffice. *Tobias v. Judge Veloso*^[56] explains:

A warning, in ordinary parlance, has been defined as “an act or fact of putting one on his guard against an impending danger, evil consequences or penalties,” while an admonition, “refers to a gentle or friendly reproof a mild rebuke, warning or reminder, counselling, on a fault, error or oversight, an expression of authoritative advice or warning.” They are not considered as penalties. **A reprimand, on the other hand, is of a more severe nature, and has been defined as a public and formal censure or severe reproof, administered to a person in fault by his superior officer or a body to which he belongs. It is more than just a warning or an admonition.**^[57] (Emphasis supplied)

So must it be.

A heavier penalty is imposed on Atty. Tabujara III for not only did he violate Rule 7.03 of the Code of Professional Responsibility, he did so in a reckless, wanton, and malevolent manner. What makes his infraction worse than that of Atty. Nicanor, Atty. Navarrete, Atty. Antay, Jr. and Atty. Calderon is that Atty. Tabujara III made a sweeping statement about the mental fitness of judges and equated homosexual judges with corrupt ones. Such language jeopardizes the high esteem in courts and is prohibited per *Tiongco v. Hon. Aguilar*.^[58]

Proscribed then are, *inter alia*, the use of unnecessary language which jeopardizes high esteem in courts, creates or promotes distrust in judicial administration (*Rheem, supra*), or tends necessarily to undermine the confidence of the people in the integrity of the members of this Court and to degrade the administration of justice by this Court (*In re: Sotto*, 82 Phil. 595 [1949]); or of offensive and abusive language (*In re: Rafael Climaco*, 55 SCRA 107 [1974]); or abrasive and offensive language (*Yangson vs. Salandanan*, 68 SCRA 42 [1975]); or of disrespectful, offensive, manifestly baseless, and malicious statements in pleadings or in a letter addressed to the judge (*Baja vs. Macandog*, 158 SCRA 391 [1988], citing the resolution of 19 January 1988 in *Phil. Public Schools Teachers Association vs. Quisumbing*, G.R. No. 76180, and *Ceniza vs. Sebastian*, 130 SCRA 295 [1984]); or of disparaging, intemperate, and uncalled-for remarks (*Sangalang vs. Intermediate Appellate Court*, 177 SCRA 87 [1989]).^[59]

The Court notes that, unlike the other lawyers here, Atty. Tabujara III did not sincerely apologize. He only said: “Unfortunately, some conversations may rub some persons the

wrong way or offend certain people. I do not profess to be perfect. I do make mistakes occasionally. If I have hurt anyone, I am sorry and seek to make amends. No one is 100% perfect.^[60] He is the only one so far who has not acknowledged his participation in the conversation and he seems to completely sidestep the fact that he made such sweeping statements against judges pertaining to their mental health or their sexual orientation. There is no slightest hint of remorse. What makes the offense worse is that Atty. Tabujara III is a professor. On this score, *Re: Anonymous Complaint Against Cresencio P. Co Untian*^[61] expounds:

Respondent's responsibilities and expectations are even more heightened because he is a law professor. He should be a beacon of righteous and conscientious conduct. Respondent, as a molder of minds of soon-to-be lawyers, should guide his students to behave and act in a manner consistent with the lofty standards of the legal profession. Instead, he abused his position of authority creating an offensive and uncomfortable atmosphere in school. Again, what should be a place of learning and growth had become a place of fear and distrust for the affected students.

Further, it is even more disappointing that respondent fails to acknowledge the consequences of his actions and disregard the hurt Sagarbarria, Toyco and Dal may have felt. He generally claimed that they did not express any distress, embarrassment, or humiliation during the incidents complained of. It must be stressed that as their law professor, respondent exercised moral ascendancy over them. Thus, it is within reason that the concerned students could not have readily expressed disgust or annoyance over a person in authority. It takes courage and strength to stand up and speak against any form of sexual harassment. This is especially true considering that in most cases, the offender wields power, authority, or influence over the victim.^[62]

Here, the Court is disturbed by the unapologizing stance of Atty. Tubajara III and his seeming disregard of his position as "*molder of minds of soon-to-be lawyers*" who is tasked with guiding "*his students to behave and act in a manner consistent with the lofty standards of the legal profession.*" Nor can his claims of being an ally and supporter of the LGBTQIA+ community absolve him of any liability. In fact, it smacks of hypocrisy, for if he was truly unbiased, he would have refrained from engaging in a homophobic and disrespectful

conversation. No one consciously and intentionally disrespect or humiliate those they hold with esteem and affection. And if hurt was unintentionally inflicted, a sincere apology can lessen the sting.

Consequently, like in *Tiongco*, Atty. Tabujara III must be sanctioned. We however cannot follow the penalty imposed in *Tiongco*. For one, *Tiongco* is dated. For another, the power of social media has multiplied the adverse impact of the statements of Atty. Tabujara III a countless times. Hence, he is fined PHP 25,000.00 with stern warning that a repetition of the same or similar offense will be dealt with more severely.

ACCORDINGLY, the Court **RESOLVES** to:

- 1) **REPRIMAND** Atty. Morgan Rosales Nicanor, Atty. Joseph Marion Peña Navarrete, Atty. Noel V. Antay, Jr. and Atty. Israel P. Calderon for violation of Rule 7.03 of the Code of Professional Responsibility, with **STERN WARNING** that a repetition of the same or similar offense will be dealt with more severely; and
- 2) **IMPOSE A FINE** in the amount of PHP 25,000.00 on Atty. Ernesto A. Tabujara III for violation of Rule 7.03 of the Code of Professional Responsibility, with **STERN WARNING** that a repetition of the same or similar offense will be dealt with more severely.

Let a copy of this Decision be attached to the respective personal records of Atty. Morgan Rosales Nicanor, Atty. Joseph Marion Peña Navarrete, Atty. Noel V. Antay, Jr., Atty. Israel P. Calderon, and Atty. Ernesto A. Tabujara III in the Office of the Bar Confidant.

Too, furnish a copy of this Decision to the Integrated Bar of the Philippines for its information and guidance; and the Office of the Court Administrator for dissemination to all courts of the Philippines.

SO ORDERED.

Gesmundo, C.J., Caguioa, Hernando, Lazaro-Javier, Inting, Zalameda, M. Lopez, Gaerlan, Rosario, J. Lopez, Dimaampao, Marquez, Kho, Jr., and Singh, JJ., concur.
Leonen, SAJ., I concur. See separate opinion.

^[1] *Rollo*, pp. 17-19.

^[2] *Id.* at 17-18.

^[3] *Id.* at 44-51.

^[4] *Id.* at 44-47.

^[5] *Id.* at 70-74.

^[6] *Id.* at 70-72.

^[7] *Id.* at 79-85.

^[8] *Id.* at 79-81.

^[9] *Id.* at 81-83.

^[10] *Id.* at 108-110.

^[11] *Id.* at 108-109.

^[12] *Id.* at 111.

^[13] *Id.* at 113.

^[14] *Id.* at 109.

^[15] *Id.* at 147-c.

^[16] *Id.* at 169.

^[17] *Id.* at 171-175.

^[18] *Id.* at 174-175.

^[19] 801 Phil. 570 (2016) [Per J. Perlas-Bernabe, First Division].

^[20] *Id.* at 583-585.

^[21] *Id.* at 585-586.

^[22] **Dayandayan v. Rojas, G.R. No. 227411**, July 15, 2020 [Per J. Gaerlan, Third Division].

^[23] See **Spouses Hing v. Choachuy, Sr.**, 712 Phil. 337, 350 (2013) [Per J. Del Castillo, Jr., Second Division].

[24] *Supra* note 19 at 585.

[25] See **Torres v. Dalangin**, 822 Phil. 80, 102 (2017) [Per J. Reyes, Jr., En Banc].

[26] *Supra* note 19.

[27] *Id.* at 588.

[28] 632 Phil. 32 (2010) [Per J. Del Castillo, En Banc].

[29] *Id.* at 80-85.

[30] 487 Phil. 531 (2004) [Per J. Puno, En Banc].

[31] *Id.* at 588-590.

[32] 767 Phil. 575 (2015) [Per J. Del Castillo, Second Division].

[33] *Id.* at 591.

[34] 861 Phil. 388, 413 (2019) [Per J. Leonen, En Banc].

[35] An Act Defining Gender-Based Sexual Harassment in Streets, Public Spaces, Online, Workplaces, and Educational or Training Institutions, Providing Protective Measures and Prescribing Penalties therefor: April 17, 2019.

[36] **Section 4. Gender-Based Streets and Public Spaces Sexual Harassment.** - The crimes of gender-based streets and public spaces sexual harassment are committed through any unwanted and uninvited sexual actions or remarks against any person regardless of the motive for committing such action or remarks.

Gender-based streets and public spaces sexual harassment includes catcalling, wolf-whistling, unwanted invitations, misogynistic, transphobic, homophobic and sexist slurs, persistent uninvited comments or gestures on a person's appearance, relentless requests for personal details, statement of sexual comments and suggestions, public masturbation or flashing of private parts, groping, or any advances, whether verbal or physical, that is unwanted and has threatened one's sense of personal space and physical safety, and committed in public spaces such as alleys, roads, sidewalks and parks. Acts constitutive of gender-based streets and public spaces sexual harassment are those performed in buildings, schools, churches, restaurants, malls, public washrooms, bars, internet shops, public

markets, transportation terminals or public utility vehicles.

Section 5. *Gender-Based Sexual Harassment in Restaurants and Cafes, Bars and Clubs, Resorts and Water Parks, Hotels and Casinos, Cinemas, Malls, Buildings and Other Privately-Owned Places Open to the Public.* - Restaurants, bars, cinemas, malls, buildings and other privately-owned places open to the public shall adopt a zero-tolerance policy against gender-based streets and public spaces sexual harassment. These establishments are obliged to provide assistance to victims of gender-based sexual harassment by coordinating with local police authorities immediately after gender-based sexual harassment is reported, making CCTV footage available when ordered by the court, and providing a safe gender-sensitive environment to encourage victims to report gender-based sexual harassment at the first instance.

All restaurants, bars, cinemas and other places of recreation shall install in their business establishments clearly-visible warning signs against gender-based public spaces sexual harassment, including the anti-sexual harassment hotline number in bold letters, and shall designate at least one (1) anti-sexual harassment officer to receive gender-based sexual harassment complaints. Security guards in these places may be deputized to apprehend perpetrators caught in flagrante delicto and are required to immediately coordinate with local authorities.

Section 6. *Gender-Based Sexual Harassment in Public Utility Vehicles.* - In addition to the penalties in this Act, the Land Transportation Office (LTO) may cancel the license of perpetrators found to have committed acts constituting sexual harassment in public utility vehicles, and the Land Transportation Franchising and Regulatory Board (LTFRB) may suspend or revoke the franchise of transportation operators who commit gender-based streets and public spaces sexual harassment acts. Gender-based sexual harassment in public utility vehicles (PUVs) where the perpetrator is the driver of the vehicle shall also constitute a breach of contract of carriage, for the purpose of creating a presumption of negligence on the part of the owner or operator of the vehicle in the selection and supervision of employees and rendering the owner or operator solidarity liable for the offenses of the employee.

Section 7. *Gender-Based Sexual Harassment in Streets and Public Spaces Committed by Minors.* - In case the offense is committed by a minor, the Department of Social Welfare and Development (DSWD) shall take necessary disciplinary measures as provided for under Republic Act No. 9344, otherwise known as the "Juvenile Justice and Welfare Act of 2006."

^[37] **Section 12. Gender-Based Online Sexual Harassment.** – Gender-based online sexual harassment includes acts that use information and communications technology in terrorizing and intimidating victims through physical, psychological, and emotional threats, unwanted sexual misogynistic, transphobic, homophobic and sexist remarks and comments online whether publicly or through direct and private messages, invasion of victim’s privacy through cyberstalking and incessant messaging, uploading and sharing without the consent of the victim, any form of media that contains photos, voice, or video with sexual content, any unauthorized recording and sharing of any of the victim’s photos, videos, or any information online, impersonating identities of victims online or posting lies about victims to harm their reputation, or filing, false abuse reports to online platforms to silence victims.

^[38] Section 17 of Rule 138 of the Rules of Court.

^[39] Rule 8.01 – A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

^[40] **Noble III v. Atty. Ailes**, 762 Phil. 296, 301 (2015) [Per J. Perlas-Bernabe, First Division].

^[41] **Gimeno v. Atty. Zaide**, 759 Phil. 10, 23-24 (2015) [Per J. Brion, Second Division].

^[42] 612 Phil. 47 (2009) [Per J. Carpio Morales, Second Division].

^[43] *Id.* at 57-58.

^[44] **A.M. No. MTJ-22-007**, March 9, 2022 [Per J. Caguioa, First Division].

^[45] 1) “Being a homosexual pervert may be one of the reasons why a person is being punished by God with not having a home of his own and with being ejected”; and 2) “pagkabading, tomboy, lesbian, ayaw ng Diyos”.

^[46] CANON 11 – A LAWYER SHALL OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS AND TO JUDICIAL OFFICERS AND SHOULD INSIST ON SIMILAR CONDUCT BY OTHERS.

^[47] **Genato v. Atty. Mallari**, 865 Phil. 247, 259 (2019) [Per Curiam, En Banc].

^[48] *Id.*

^[49] 310 Phil. 652 (1995) [Per J. Davide, First Division].

^[50] *Id.* at 659.

^[51] 674 Phil. 1, 10 (2011) [Per J. Brion, Second Division].

^[52] 293 Phil. 425 (1993) [Per J. Romero, Third Division].

^[53] Indeed, in the Motion for Reconsideration, counsels for petitioner describe as “unparalleled for sheer malevolence” respondent judge’s allegedly erroneous assumptions. Petitioner’s lawyers further stated: “Petitioner’s counsel, citing the above proceedings, contested the trial judge’s baseless, nay despotic attempt to muzzle his right to be heard in his defense ...” The trial judge’s actions were also branded as an obviously unholy rush to do petitioner in ...”

In the Urgent Motion filed by petitioner on December 16, 1992, respondent judge is alleged to have: (1) “generated belief of his being under contract to do the prosecution’s bidding;” (2) “evinced contempt for Supreme Court case law;” and (3) “dishonored his judicial oath and duty to hear before he condemns, proceed upon inquiry, and render judgment on a man’s liberty only after a full trial of the facts. *Id.* at 452.

^[54] 310 Phil. 652 (1995) [Per J. Davide, Jr., First Division].

^[55] *Supra* note 47 at 259.

^[56] 188 Phil. 267 (1980) [Per J. Melencio-Herrera, First Division].

^[57] *Id.* at 274.

^[58] *Supra* note 54.

^[59] *Id.* at 662-663.

^[60] *Rollo*, p. 99.

^[61] 851 Phil. 352 (2019) [Per J. Reyes, Jr., En Banc].

^[62] *Id.* at 366.

SEPARATE CONCURRING OPINION

LEONEN, SAJ.:

I concur. Atty. Noel V. Antay, Jr., Atty. Ernesto A. Tabujara III, Atty. Israel P. Calderon, Atty. Morgan Rosales Nicanor, and Atty. Joseph Marion Peña Navarrete (respondents) should be disciplined by this Court for their Facebook posts.

In *Falcis v. Civil Registrar General*,^[1] this Court introduced a definition of the concept of “sexual orientation”:

Guidelines for Psychological Practice with Transgender and Gender Nonconforming People, 70 AMERICAN PSYCHOLOGIST 832, 862 (2015), available at <<https://www.apa.org/practice/guidelines/transgender.pdf>> (last visited on September 2, 2019), provides:

Sexual orientation: a component of identity that includes a person’s sexual and emotional attraction to another person and the behavior and/or social affiliation that may result from this attraction. A person may be attracted to men, women, both, neither, or to people who are genderqueer, androgynous, or have other gender identities. Individuals may identify as lesbian, gay, heterosexual, bisexual, queer, pansexual, or asexual, among others.^[2]

“Gender identity” and “gender expression” were defined as:

SECTION 3. Definition of Terms. — As used in this Act:

....

(f) Gender identity and/or expression refers to the personal sense of identity as characterized, among others, by manner of clothing, inclinations, and behavior in relation to masculine or feminine conventions. A person may have a male or female identity with physiological characteristics of the opposite sex, in which case this person is considered transgender[.]

Gender identity has also been defined in Guidelines for Psychological Practice with Transgender and Gender Nonconforming People, 70 AMERICAN PSYCHOLOGIST 832, 862 (2015), available at <<https://www.apa.org/practice/guidelines/transgender.pdf>> (last visited on

September 2, 2019), as follows:

Gender identity: a person’s deeply felt, inherent sense of being a boy, a man, or male; a girl, a woman, or female; or an alternative gender (e.g., genderqueer, gender nonconforming, gender neutral) that may or may not correspond to a person’s sex assigned at birth or to a person’s primary or secondary sex characteristics. Because gender identity is internal, a person’s gender identity is not necessarily visible to others. “Affirmed gender identity” refers to a person’s gender identity after coming out as [transgender and gender non-conforming] or undergoing a social and/or medical transition process.

Sexual Orientation, Gender Identity and Expression, and Sex Characteristics at the Universal Periodic Review, ARC INTERNATIONAL, THE INTERNATIONAL BAR ASSOCIATION AND THE INTERNATIONAL LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASSOCIATION 14 (2016), available at <https://ilga.org/downloads/SOGIESC_at_UPR_report.pdf> (last visited on September 2, 2019), provides:

Gender expression: External manifestations of gender, expressed through one’s name, pronouns, clothing, haircut, behavior, voice, or body characteristics. Society identifies these cues as masculine and feminine, although what is considered masculine and feminine changes over time and varies by culture. Typically, transgender people seek to make their gender expression align with their gender identity, rather than the sex they were assigned at birth.^[3]

Further, *Falcis* recognized that our Constitution is “capable of accommodating a contemporaneous understanding of sexual orientation, gender identity and expression, and sex characteristics”^[4] in its provisions. As such, this Court has noted that the term “marriage” in Article XV, Section 2 is textually not defined or restricted based on sex, gender, sexual orientation, gender identity or expression.^[5]

Similarly, our Constitution is equally capable of accommodating a contemporaneous understanding of sexual orientation, gender identity and expression, and sex characteristics (SOGIESC) in Article II, Section 11:

SECTION 11. The State values the dignity of every human person and guarantees

full respect for human rights.

Respect is at the core of human dignity, and this includes respect for each person's SOGIESC.

It is often wrongly assumed that only people who are lesbian, gay, bisexual, transgender, queer or similar (LGBTQ+) have a SOGIESC. The truth is that all persons have SOGIESC. When LGBTQ+ persons seek respect for their SOGIESC, they are only asking for the same respect and dignity afforded to persons whose SOGIESC are in the majority or the so-called mainstream—heterosexual, or a sexual orientation defined by sexual and romantic attraction to persons of the opposite sex; cisgender, or gender identity that corresponds to their sex assigned at birth or their primary or secondary sex characteristics; and gender expression that conforms to conventional or traditional ideas of masculinity and femininity. Many heterosexual, cisgender, and gender-conforming persons have no need to seek respect for their SOGIESC because their identities are respected without question, with their SOGIESC already aligned with social and cultural expectations. But for people whose SOGIESC are outside what is perceived to be the norm, respect is not so much a given, as it is often a struggle: a life-long struggle, both internally—for a person to accept who they are—and externally—for others to accept them. As noted in *Falcis*:

Cultural hegemony often invites people to conform to its impositions on their identities. Yet, there are some who, despite pressures, courageously choose to be authentic to themselves. This case is about the assurance of genuine individual autonomy within our constitutional legal order. It is about the virtue of tolerance and the humane goal of nondiscrimination. It is about diversity that encourages meaningful—often passionate—deliberation. Thus, it is about nothing less than the quality of our freedom.^[6]

I agree with the ponencia in that LGBTQ+ people's freedom to be themselves and expression of who they are is part of their constitutionally granted right of freedom of expression.^[7] But more than that, LGBTQ+ people's struggle for respect goes hand in hand with the defense of their right to exist. As with other marginalized peoples, LGBTQ+ people have been historically perceived to be undeserving of being treated with dignity. To this day, their dehumanization and othering persist. Treating LGBTQ+ people as though they are subhuman or "the other" too often becomes license for the deprivation, time and time

again, of their fundamental human rights, including their right to life.

The duty of recognition and protection of human rights is incumbent upon all people, as members of a common human society. And the faithful discharge of that duty is all the more demanded from members of the Philippine Bar, who have taken an oath to uphold the Constitution and its provisions. When lawyers use discriminatory and derogatory language, they not only disrespect the specific lawyers and judges to whom the language is directed, but also demonstrate their disrespect for the inherent dignity and rights of an entire group of marginalized peoples. I agree with the *ponencia* in this:

It is not a defense that the discriminatory language was uttered in what was seemingly intended to be private exchanges among the macho men. The fact that their exchanges became public trumps whatever intention they may have had to keep their communications private. Seekers of righteousness cannot seek cover under a pledge of anonymity when the[ir] actions are brought to light for everyone's scrutiny. Here, this was what happened. Unfortunately or fortunately, respondents' true character came to light. Their secret codes divulged. This was their undoing. Their conversations became public and have become a public proceeding by the turn of events, as if they were uttered in a public discourse such as a court hearing.^[8]

The fitness to practice law is not only a matter of competence, but also of character. Respondents' acts are in violation of Rule 7.03 of the Code of Professional Responsibility, and they must be disciplined accordingly.

ACCORDINGLY, I vote as follows:

- 1) **REPRIMAND** Atty. Morgan Rosales Nicanor, Atty, Joseph Marion Peña Navarrete, Atty. Noel V. Antay, Jr. and Atty. Israel P. Calderon for violation of Rule 7.03 of the Code of Professional Responsibility, with **STERN WARNING** that a repetition of the same or similar offense will be dealt with more severely; and
- 2) **IMPOSE A FINE** in the amount of PHP 25,000.00 on Atty. Ernesto A. Tabujara III for violation of Rule 7.03 of the Code of Professional Responsibility, with **STERN WARNING** that a repetition of the same or similar offense will be dealt with more severely.

^[1] **G.R. No. 217910**, September 3, 2019 [Per J. Leonen, *En Banc*].

^[2] *Id.*, footnote 102.

^[3] *Id.*, footnote 103.

^[4] *Id.*

^[5] *Id.*

^[6] *Id.*

^[7] *Ponencia*, p. 9.

^[8] *Id.* at 16.

Date created: November 07, 2023