

Azarraga v. Jalbuna

A.C. No. 13678 | 22 February 2023

CASE DIGEST

GIST Series

A lawyer who obtained a marriage certificate from the Philippine Statistics Authority, in accordance with the agency's applicable policies, and then later used it in a case did not commit a data privacy violation.



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TAGS: **unauthorized processing of personal information and sensitive personal information, processing, sensitive personal information, criteria for the lawful processing of sensitive personal information and privileged information**, processing necessary for the protection of lawful rights and interests of natural or legal persons in court proceedings, processing necessary for the establishment, exercise or defense of legal claims, processing concerns personal information that is provided to government or public authority, **data privacy principles**, transparency, legitimate purpose, proportionality

FACTS

- Atty. Eduardo Jalbuna was caught in the middle of a family dispute where relatives were filing multiple cases against one another. Not only was he a lawyer for some of the members, he also ended up becoming either a complainant or a respondent in some of the cases.
- In one case, a disbarment complaint was filed against him for, among other things, supposedly violating the Code of Professional Responsibility, which says that a lawyer must obey all laws. Specifically, he was accused of violating the Data Privacy Act of 2012 (DPA).
- According to the complaint, Atty. Jalbuna, “sometime in April, 2017”, obtained from the Philippine Statistics Authority (PSA) a copy of the marriage contract between Ehrenfrel Azarraga and his ex-wife.

He then used it to make it appear that Ehrenfrel was still married to his ex-wife (NOTE: Their marriage had already been nullified), maliciously implying that Ehrenfrel’s relationship with his present wife, Therese, is illegal and a scandalous one. Ehrenfrel and his ex-wife were not informed and did not consent to the retrieval of the marriage contract.

- According to Atty. Jalbuna, he used the document as evidence in a petition for guardianship case, in order to challenge the fitness of the guardian, Therese, Ehrenfrel’s current wife.
- The Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) absolved Atty. Jalbuna of the charge. This was later adopted by the IBP Board of Governors.



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ISSUE

Is Atty. Jalbuna administratively liable under the Code of Professional Responsibility for violating the DPA?

DISCUSSION

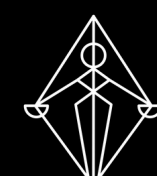
A. Unauthorized processing of sensitive personal information

- Atty. Jalbuna is accused of committing “unauthorized processing of personal information and sensitive personal information”, as defined under Section 25 of the DPA.
- To determine liability under this provision, the following elements must be established:
 1. The accused processed the information of the data subject.
 2. The information processed constitutes personal information or sensitive personal information.
 3. The processing was done without the consent of the data subject, or without being authorized under the DPA or any other existing law.

1. The accused processed the information of the data subject.

- *Q: Does requesting, obtaining, and using a marriage certificate in relation to a legal proceeding constitute "processing"?*

- Based on Sec. 3(j) of the DPA, processing refers to the use of personal or sensitive personal information at any point of its life cycle, which begins from the collection of the information from individuals until its destruction.
- There is nothing in the provision, the DPA, or its Implementing Rules and Regulations that limits "processing" to digital means. The DPA governs not just the processing of personal information in digital platforms, but also those found in documents. Where the law does not distinguish, we should not distinguish.
- In this case, Atty. Jalbuna requested and obtained the certificate in order to look into the personal circumstances of Therese. It was in connection with the petition for guardianship Therese filed for her mother, Teresita. Atty. Jalbuna wanted to use it to question Therese's moral fitness as guardian.
- Given this, Atty. Jalbuna's action of collecting, storing, and using the sensitive personal information of Therese as evidence to support his allegations in the guardianship case is considered processing of sensitive personal information.



2. The information processed constitutes personal information or sensitive personal information.

- *Q: Is the information in a marriage certificate considered personal information or sensitive personal information under the DPA?*
- Section 3(l) of the DPA defines what is sensitive personal information.
- Among the information that can be found in a marriage certificate is a person's marital status.
- As such, the information processed by Atty. Jalbuna is classified as sensitive personal information.

3. The processing was done without the consent of the data subject, or without being authorized under the DPA or any other existing law.

- *Q: Assuming that Atty. Jalbuna's action constitute processing, is it considered lawful and authorized?*
- First off, it must be clarified that lawyers without appropriate authorization can no longer request or obtain a

person's marriage certificate from the PSA without authorization from such person. This is clear from the PSA's policies, particularly Memo Circular No. 2019-16 (11 Jun 2019)—pursuant to pursuant to MC 2017-050 and MC 2017-09.

- Here, the allegation is that Atty. Jalbuna obtained the marriage certificate "sometime in April 2017," apparently before the PSA limited the authorized persons who can request for copies of certificates of birth, marriage, and death.
- Although MC 2017-050 was issued on 17 April 2017, the vague allegation that Atty. Jalbuna's act was done "sometime in April 2017" is not enough to prove that MC 2017-050 had already been in effect at that point in time.
- A lawyer enjoys the legal presumption that he is innocent of charges filed against him until the contrary is proved. The burden is on the complainant to establish his case by substantial evidence (see: Asuncion v. Salvado).
- Since Atty. Jalbuna did not violate the rules or procedures of the PSA when he obtained the marriage certificate, his actions shall be evaluated based on the DPA.



- Section 13 of the DPA states the rule on the processing of sensitive personal information. Section 13(f), in particular, contemplates three different instances of lawful processing:
 - If it is necessary for the protection of lawful rights and interests of natural or legal persons in court proceedings
 - If it is necessary for the establishment, exercise or defense of legal claims; or
 - If it concerns personal information that is provided to government or public authority.
- In this case, the marriage certificate was used as documentary evidence before a trial court, in relation to a petition for guardianship. Since the PSA had not yet issued and implemented its policies on limited access to documents at the time of controversy, Atty. Jalbuna's actions are considered as processing of personal information necessary for the protection of lawful rights and interest of natural or legal persons in court proceedings, under Section 13(f).
- Moving forward, the actions taken by Atty. Jalbuna will not be treated the same way, in

light of PSA's new policies. A lawyer requesting for certain information from the agency remains to be subject to its guidelines. To quote Canon 19 of the Code of Professional Responsibility: a lawyer shall represent his client with zeal within the bounds of the law.

B. Data privacy principles

- Nothing here gives lawyers unabated discretion to obtain information from repositories of personal information, like government agencies, which do not yet have any policy on the matter.
- Section 11 of the DPA provides basic, all-encompassing principles for the processing of information: (1) transparency, (2) legitimate purpose, and (3) proportionality.
 - Transparency is collecting personal information for specified and legitimate purposes determined and declared before, or as soon as reasonably practicable. [Section 11(a)]
 - Legitimate purpose pertains to processing that is done fairly and lawfully. [Section 11(b)]
 - Proportionality entails that the personal information sought must be necessary for purposes for which it is to be used. [Section 11(c)]



- Paragraph (d) adds that the personal information must be adequate and not excessive in relation to the purposes for which they are collected and processed.
- Paragraph (e), also contemplating proportionality, requires that the personal information must only be retained by the lawyer for as long as necessary for the fulfillment of the purposes for which the information was obtained.

C. Cadajas v. People

- The Court's statement in *Cadajas v. People* is reiterated—while violation of privacy is governed by the DPA, its admissibility shall be governed by the rules on relevance, materiality, authentication of documents, and the exclusionary rules under the Rules on Evidence.

JUDGMENT

When he obtained the marriage certificate, Atty. Jalbuna did not engage in unlawful, dishonest, immoral, or deceitful conduct. The recommendation of the IBP to dismiss the disbarment complaint is affirmed.



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