

IMPLEMENTING THE PROVISIONS OF REPUBLIC ACT NO 8493 ENTITLED "AN ACT TO ENSURE A SPEEDY TRIAL OF ALL CRIMINAL CASES BEFORE THE SANDIGANBAYAN, REGIONAL TRIAL COURT METROPOLITAN ...

SC CIRCULAR NO. 38-98, August 11, 1998

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SECTION 1. Purpose of Circular.— This Circular is promulgated for the purpose of implementing the provisions of Republic Act No. 8493, otherwise known as the "Speedy Trial Act of 1998," as directed in Section 15 thereof.

SEC. 2. Time Limit for Arraignment and Pre-trial.— The arraignment, and the pre-trial if the accused pleads not guilty to the crime charged, shall be held within thirty (30) days from the date the court acquires jurisdiction over the person of the accused. The period of the pendency of a motion to quash, or for a bill of particulars, or other causes justifying suspension of arraignment shall be excluded.

SEC. 3. Mandatory Pre-Trial in Criminal Cases.— In all; criminal cases cognizable by the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Court, the court shall, after arraignment, order a pre-trial conference to consider the following:

- (a) Plea bargaining;
- (b) Stipulation of facts;
- (c) Marking for identification of evidence of the parties;
- (d) Waiver of objections to admissibility of evidence; and
- (e) Such other matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case.

If the accused has pleaded not guilty to the crime charged, he may state whether he interposes a negative or affirmative defense. A negative defense shall require the prosecution to prove the guilt of the accused beyond reasonable doubt, while an affirmative defense may modify the order of trial and require the accused to prove such defense by clear and convincing evidence.

SEC. 4. Pre-Trial Agreement.— All agreements or admissions made or entered into during the pre-trial conference shall be reduced to writing and signed by the accused and counsel, otherwise the same shall not be used against the accused. The agreements in relation to matters referred to in Section 3 hereof are, subject to the approval of the court: Provided, That the agreement on the plea of the accused should, be to a lesser offense necessarily included in the offense charged.

SEC. 5. Non-appearance at Pre-Trial Conference.— Where counsel for the accused or the prosecutor does not appear at the pre-trial conference and does not offer an acceptable excuse for his lack of cooperation, the court may impose proper sanctions or penalties.

SEC. 6. Pre-Trial Order.— After the pre-trial conference, the court shall issue an order reciting the actions taken,

the facts stipulated, and the evidence marked. Such order shall bind the parties, limit the trial to matters not disposed of and control the course of action during the trial, unless modified by the court to prevent manifest injustice.

Thereafter, where a plea of not guilty is entered, the accused shall have at least fifteen (15) days to prepare for trial which shall commence within thirty (30) days from receipt of the pre-trial order.

SEC. 7. Extended Time Limit.— Notwithstanding the provisions of the preceding Sections 2 and 6 for the first twelve-calendar-month period following its effectivity, the time limit with respect to the period from arraignment to trial imposed by said provision shall be one hundred eighty (180) days. For the second twelve-month period, the time limit shall be one hundred twenty (120) days, and for the third twelve-month period the time limit shall be eighty (80) days.

SEC. 8. Time Limit for Trial.— In criminal cases involving persons charged with a crime, except those subject to the Rule on Summary Procedure, or where the penalty prescribed by law does not exceed six (6) months imprisonment, or a fine of one thousand pesos (P1,000.00) or both, irrespective of other impossible penalties, the court shall, after consultation with the public prosecutor and the counsel for the accused, set the case for continuous trial on a weekly or other short-term trial calendar at the earliest possible time so as to ensure speedy trial. In no case shall the entire trial period exceed one hundred eighty (180) days from the first day of trial, except as otherwise authorized by the Court Administrator pursuant to Section 2, Rule 30 of the Rules of Court.

SEC. 9. Exclusions.— The following periods of delay shall be excluded in computing the time within which trial must commence:

(a) Any period of delay resulting from other proceedings concerning the accused, including but not limited to the following:

- (1) delay resulting from an examination of the physical and mental condition of the accused;
- (2) delay resulting from proceedings with respect to other criminal charges against the accused; :
- (3) delay resulting from extraordinary remedies against interlocutory orders;
- (4) delay resulting from pre-trial proceedings: Provided, that the delay does not exceed thirty (30) days;
- (5) delay resulting from orders of inhibition or proceedings relating to change of venue of cases or transfer from other courts;
- (6) delay resulting from a finding of the existence of a valid prejudicial question; and
- (7) delay reasonably attributable to any period, not to exceed thirty (30) days, during which any proceeding concerning the accused is actually under advisement.

(b) Any period of delay resulting from the absence or unavailability of an essential witness.

For purposes of this subparagraph, an essential witness shall be considered absent when his whereabouts are unknown or his whereabouts cannot be determined by due diligence. An essential witness shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence.

(c) Any period of delay resulting from the fact that the accused is mentally incompetent or physically unable to stand trial.

(d) If the information is dismissed upon motion of the prosecution and thereafter a charge is filed against the accused for the same offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.

(e) A reasonable period of delay when the accused is joined for trial with a co-accused over whom the court has

not acquired jurisdiction, or as to whom the time for trial has not run and no motion for separate trial has been granted.

(f) Any period of delay resulting from a continuance granted by any court *motu proprio* or on motion of either the accused or his counsel or the prosecution, if the court granted such continuance on the basis of his findings set forth in the order that the ends of justice served by taking such action outweigh the best interest of the public and the accused in a speedy trial.

SEC. 10. Factors for Granting Continuance.— The following factors, among others, shall be considered by a court in determining whether to grant a continuance under subparagraph (f) of Section 9 hereof:

(a) Whether or not the failure to grant a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice; and

(b) Whether or not the case taken as a whole is so novel, unusual and complex, due to the number of accused or the nature of the prosecution or otherwise, that it is unreasonable to expect adequate preparation within the periods of time established herein.

No continuance under subparagraph (f) of Section 9 hereof shall be granted because of congestion of the court's calendar, or lack of diligent preparation or failure to obtain available witnesses on the part of the public prosecutor.

SEC. 11. Time Limit Following an Order for New Trial.— If the accused is to be tried again pursuant to an order of a court for a new trial, the trial shall commence within thirty (30) days from notice of that order, except that the court retrying the case may extend such period but not to exceed one hundred eighty (180) days from notice of said order for a new trial if unavailability of witnesses or other factors make trial within thirty (30) days impractical.

SEC. 12. Public Attorney's Duties Where Accused is Imprisoned.— If the public attorney assigned to defend a person charged with a crime knows that the latter is preventively detained, either because he is charged with a bailable crime and has no means to post bail, or is charged with a non-bailable crime, or is serving a term of imprisonment in any penal institution:

(a) The public attorney shall promptly undertake to obtain the presence of the prisoner for trial, or cause a notice to be served on the person having custody of the prisoner requiring such person to so advise the prisoner of his right to demand trial.

(b) Upon receipt of that notice, the person having custody of the prisoner shall promptly advise the prisoner of the charge and of his right to demand trial. If at anytime thereafter the prisoner informs his custodian that he demands such trial, the latter shall cause notice to that effect to be sent promptly to the public attorney.

(c) Upon receipt of such notice, the public attorney shall promptly seek to obtain, the presence of the prisoner for trial.

(d) When the person having custody of the prisoner receives from the public attorney a properly supported request for the availability of the prisoner for purposes of the trial, the prisoner shall be made available accordingly.

SEC. 13. Sanctions.— In any case in which private counsel for the accused, the public attorney or the public prosecutor:

(a) knowingly allows the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial;

- (b) files a motion solely for the purpose of delay which he knows is totally frivolous and without merit;
- (c) makes a statement for the purpose of obtaining continuance which he knows to be false and which is material to the granting of a continuance; or
- (d) otherwise willfully fails to proceed to trial without justification consistent with the provisions hereof, the court may punish any such counsel, attorney or prosecutor, as follows:
- (1) in the case of a counsel privately retained in connection with the defense of an accused, by imposing a fine not exceeding twenty thousand pesos (P20,000.00);
- (2) by imposing on any appointed counsel de oficio, public attorney or public prosecutor a fine not exceeding five thousand pesos (P5,000.00); and
- (3) by denying any defense counsel or public prosecutor the right to practice before the court considering the case for a period not exceeding thirty (30) days.

The authority to punish provided for by this section shall be without prejudice to any appropriate criminal action or any other sanction authorized under the Rules of Court.

SEC. 14. Remedy Where Accused is Not Brought to Trial Within the Time Limit.— If the accused is not brought to trial within the time limit required by Sections 2 and 6 hereof, as extended by Section 7, the information may be dismissed on motion of the accused on the ground of denial of his right to speedy trial. The accused shall have the burden of proving such motion but the prosecution shall have the burden of going forward with the evidence in connection with the exclusion of time under Section 9 hereof. The dismissal shall be subject to the rules on double jeopardy.

Failure of the accused to move for dismissal prior to trial shall constitute a waiver of the right to dismiss under this section.

SEC. 15. Republic Act No. 8493 Not a Bar to Provision on Speedy Trial in the Constitution.— No provision of Republic Act No. 8493 shall be interpreted as a bar to any charge of denial of speedy trial as provided by Article 111, Section 14(2), of the 1987 Constitution.

SEC. 16. Effectivity. — This Circular shall be published in two (2) newspapers of general circulation and shall take effect on September 15, 1998.

August 11, 1998.

(SGD.) ANDRES R. NARVASA

Court Administrator

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