

RULE ON DECLARATION OF ABSOLUTE NULLITY OF VOID MARRIAGES AND ANNULMENT OF VOIDABLE MARRIAGES

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RULE ON DECLARATION OF ABSOLUTE NULLITY OF VOID MARRIAGES AND ANNULMENT OF VOIDABLE MARRIAGES Section 1. Scope.— This Rule shall govern petitions for declaration of absolute nullity of void marriages and annulment of voidable marriages under the Family Code of the Philippines. The Rules of Court shall apply suppletorily. Sec. 2. Petition for declaration of absolute nullity of void marriages.— (a) Who may file.—A petition for declaration of absolute nullity of void marriage may be filed solely by the husband or the wife. (n) (b) Where to file.—The petition shall be filed in the Family Court. (c) Imprescriptibility of action or defense.—An action or defense for the declaration of absolute nullity of void marriage shall not prescribe. (d) What to allege.—A petition under Article 36 of the Family Code shall specifically allege the complete facts showing that either or both parties were psychologically incapacitated from complying with the essential marital obligations of marriage at the time of the celebration of marriage even if such incapacity becomes manifest only after its celebration. The complete facts should allege the physical manifestations, if any, as are indicative of psychological incapacity at the time of the celebration of the marriage but expert opinion need not be alleged. Sec. 3. Petition for annulment of voidable marriages.— (a) Who may file.—The following persons may file a petition for annulment of voidable marriage based on any of the grounds under Article 45 of the Family Code and within the period herein indicated:

- The contracting party whose parent, or guardian, or person exercising substitute parental authority did not give his or her consent, within five years after attaining the age of twenty-one unless, after attaining the age of twenty-one, such party freely cohabited with the other as husband or wife; or the parent, guardian or person having legal charge of the contracting party, at any time before such party has reached the age of twenty-one;
- The sane spouse who had no knowledge of the other's insanity; or by any relative, guardian, or person having legal charge of the insane, at any time before the death of either party; or by the insane spouse during a lucid interval or after regaining sanity, provided that the petitioner, after coming to reason, has not freely cohabited with the other as husband or wife;
- The injured party whose consent was obtained by fraud, within five years after the discovery of the fraud, provided that said party, with full knowledge of the facts constituting the fraud, has not freely cohabited with the other as husband or wife;
- The injured party whose consent was obtained by force, intimidation, or undue influence, within five years from the time the force, intimidation, or undue influence disappeared or ceased, provided that the force, intimidation, or undue influence having disappeared or ceased, said party has not thereafter freely cohabited with the other as husband or wife;
- The injured party where the other spouse is physically incapable of consummating the marriage with the other and such incapacity continues and appears to be incurable, within five years after the celebration of marriage; and
- The injured party where the other party was afflicted with a sexually-transmissible disease found to be serious and appears to be incurable, within five years after the celebration of marriage.

(b) Where to file.—The petition shall be filed in the Family Court. Sec. 4. Venue.—The petition shall be filed in the Family Court of the province or city where the petitioner or the respondent has been residing for at least six months prior to the date of filing, or in the case of a non-resident respondent, where he may be found in the Philippines, at the election of the petitioner. Sec. 5. Contents and form of petition.—(1) The petition shall allege the complete facts constituting the cause of action. (2) It shall state the names and ages of the common children of the parties and specify the regime governing their property relations, as well as the properties involved. If there is no adequate provision in a written agreement between the parties, the petitioner may apply for a provisional order for spousal support, custody and support of common children, visitation rights, administration of community or conjugal property, and other matters similarly requiring urgent action. (3) It must be verified and accompanied by a certification against forum shopping. The verification and certification must be signed personally by the petitioner. No petition may be filed solely by counsel or through an attorney-in-fact. If the petitioner is in a foreign country, the verification and certification against forum shopping shall be authenticated by the duly authorized officer of the Philippine embassy or legation, consul general, consul or vice-consul or consular agent in said country. (4) It shall be filed in six copies. The petitioner shall serve a copy of the petition on the Office of the Solicitor General and the Office of the City or Provincial Prosecutor, within five days from the date of its filing and submit to the court proof of such service within the same period. Failure to comply with any of the preceding requirements may be a ground for immediate dismissal of the petition. Sec. 6. Summons.—The service of summons shall be governed by Rule 14 of the Rules of Court and by the following rules:

- Where the respondent cannot be located at his given address or his whereabouts are unknown and cannot be ascertained by diligent inquiry, service of summons may, by leave of court, be effected upon him by publication once a week for two consecutive weeks in a newspaper of general circulation in the Philippines and in such places as the court may order. In addition, a copy of the summons shall be served on the respondent at his last known address by registered mail or any other means the court may deem sufficient.

- The summons to be published shall be contained in an order of the court with the following data: (a) title of the case; (b) docket number; (c) nature of the petition; (d) principal grounds of the petition and the reliefs prayed for; and (e) a directive for the respondent to answer within thirty days from the last issue of publication.

Sec. 7. Motion to dismiss.—No motion to dismiss the petition shall be allowed except on the ground of lack of jurisdiction over the subject matter or over the parties; provided, however, that any other ground that might warrant a dismissal of the case may be raised as an affirmative defense in an answer. Sec. 8. Answer.—(1) The respondent shall file his answer within fifteen days from service of summons, or within thirty days from the last issue of publication in case of service of summons by publication. The answer must be verified by the respondent himself and not by counsel or attorney-in-fact. (2) If the respondent fails to file an answer, the court shall not declare him or her in default. (3) Where no answer is filed or if the answer does not tender an issue, the court shall order the public prosecutor to investigate whether collusion exists between the parties. Sec. 9. Investigation report of public prosecutor.—(1) Within one month after receipt of the court order mentioned in paragraph (3) of Section 8 above, the public prosecutor shall submit a report to the court stating whether the parties are in collusion and serve copies thereof on the parties and their respective counsels, if any. (2) If the public prosecutor finds that collusion exists, he shall state the basis thereof in his report. The parties shall file their respective comments on the finding of collusion within ten days from receipt of a copy of the report. The court shall set the report for hearing and if convinced that the parties are in collusion, it shall dismiss the petition. (3) If the public prosecutor reports that no collusion exists, the court shall set the case for pre-trial. It shall be the duty of the public prosecutor to appear for the State at the pre-trial. Sec. 10. Social worker.—The court may require a social worker to conduct a case study and submit the corresponding report at least three days before the pre-trial. The court may also require a case study at any stage of the case whenever necessary. Sec. 11. Pre-trial.—(1) Pre-trial mandatory.—A pre-trial

is mandatory. On motion or motu proprio, the court shall set the pre-trial after the last pleading has been served and filed, or upon receipt of the report of the public prosecutor that no collusion exists between the parties. (2) Notice of pre-trial.—(a) The notice of pre-trial shall contain: (1) the date of pre-trial conference; and (2) an order directing the parties to file and serve their respective pre-trial briefs in such manner as shall ensure the receipt thereof by the adverse party at least three days before the date of pre-trial. (b) The notice shall be served separately on the parties and their respective counsels as well as on the public prosecutor. It shall be their duty to appear personally at the pre-trial. (c) Notice of pre-trial shall be sent to the respondent even if he fails to file an answer. In case of summons by publication and the respondent failed to file his answer, notice of pre-trial shall be sent to respondent at his last known address. Sec. 12. Contents of pre-trial brief.—The pre-trial brief shall contain the following:

- (a) A statement of the willingness of the parties to enter into agreements as may be allowed by law, indicating the desired terms thereof; (b) A concise statement of their respective claims together with the applicable laws and authorities; (c) Admitted facts and proposed stipulations of facts, as well as the disputed factual and legal issues; (d) All the evidence to be presented, including expert opinion, if any, briefly stating or describing the nature and purpose thereof; (e) The number and names of the witnesses and their respective affidavits; and (f) Such other matters as the court may require.

Failure to file the pre-trial brief or to comply with its required contents shall have the same effect as failure to appear at the pre-trial under the succeeding paragraphs. Sec. 13. Effect of failure to appear at the pre-trial.—(a) If the petitioner fails to appear personally, the case shall be dismissed unless his counsel or a duly authorized representative appears in court and proves a valid excuse for the non-appearance of the petitioner. (b) If the respondent has filed his answer but fails to appear, the court shall proceed with the pre-trial and require the public prosecutor to investigate the non-appearance of the respondent and submit within fifteen days thereafter a report to the court stating whether his non-appearance is due to any collusion between the parties. If there is no collusion, the court shall require the public prosecutor to intervene for the State during the trial on the merits to prevent suppression or fabrication of evidence. Sec. 14. Pre-trial conference.—At the pre-trial conference, the court: (a) May refer the issues to a mediator who shall assist the parties in reaching an agreement on matters not prohibited by law. The mediator shall render a report within one month from referral which, for good reasons, the court may extend for a period not exceeding one month. (b) In case mediation is not availed of or where it fails, the court shall proceed with the pre-trial conference, on which occasion it shall consider the advisability of receiving expert testimony and such other matters as may aid in the prompt disposition of the petition. Sec. 15. Pre-trial order.—(a) The proceedings in the pre-trial shall be recorded. Upon termination of the pre-trial, the court shall issue a pre-trial order which shall recite in detail the matters taken up in the conference, the action taken thereon, the amendments allowed on the pleadings, and, except as to the ground of declaration of nullity or annulment, the agreements or admissions made by the parties on any of the matters considered, including any provisional order that may be necessary or agreed upon by the parties. (b) Should the action proceed to trial, the order shall contain a recital of the following:

- Facts undisputed, admitted, and those which need not be proved subject to Section 16 of this Rule;
- Factual and legal issues to be litigated;
- Evidence, including objects and documents, that have been marked and will be presented;
- Names of witnesses who will be presented and their testimonies in the form of affidavits; and
- Schedule of the presentation of evidence.

(c) The pre-trial order shall also contain a directive to the public prosecutor to appear for the State and take steps

to prevent collusion between the parties at any stage of the proceedings and fabrication or suppression of evidence during the trial on the merits. (d) The parties shall not be allowed to raise issues or present witnesses and evidence other than those stated in the pre-trial order. The order shall control the trial of the case, unless modified by the court to prevent manifest injustice. (e) The parties shall have five days from receipt of the pre-trial order to propose corrections or modifications. Sec. 16. Prohibited compromise.—The court shall not allow compromise on prohibited matters, such as the following:

- (a) The civil status of persons; (b) The validity of a marriage or of a legal separation; (c) Any ground for legal separation; (d) Future support; (e) The jurisdiction of courts; and (f) Future legitime.

Sec. 17. Trial.—(1) The presiding judge shall personally conduct the trial of the case. No delegation of the reception of evidence to a commissioner shall be allowed except as to matters involving property relations of the spouses. (2) The grounds for declaration of absolute nullity or annulment of marriage must be proved. No judgment on the pleadings, summary judgment, or confession of judgment shall be allowed. (3) The court may order the exclusion from the courtroom of all persons, including members of the press, who do not have a direct interest in the case. Such an order may be made if the court determines on the record that requiring a party to testify in open court would not enhance the ascertainment of truth; would cause to the party psychological harm or inability to effectively communicate due to embarrassment, fear, or timidity; would violate the right of a party to privacy; or would be offensive to decency or public morals. (4) No copy shall be taken nor any examination or perusal of the records of the case or parts thereof be made by any person other than a party or counsel of a party, except by order of the court. Sec. 18. Memoranda.—The court may require the parties and the public prosecutor, in consultation with the Office of the Solicitor General, to file their respective memoranda in support of their claims within fifteen days from the date the trial is terminated. It may require the Office of the Solicitor General to file its own memorandum if the case is of significant interest to the State. No other pleadings or papers may be submitted without leave of court. After the lapse of the period herein provided, the case will be considered submitted for decision, with or without the memoranda. Sec. 19. Decision.—(1) If the court renders a decision granting the petition, it shall declare therein that the decree of absolute nullity or decree of annulment shall be issued by the court only after compliance with Articles 50 and 51 of the Family Code as implemented under the Rule on Liquidation, Partition and Distribution of Properties. (2) The parties, including the Solicitor General and the public prosecutor, shall be served with copies of the decision personally or by registered mail. If the respondent summoned by publication failed to appear in the action, the dispositive part of the decision shall be published once in a newspaper of general circulation. (3) The decision becomes final upon the expiration of fifteen days from notice to the parties. Entry of judgment shall be made if no motion for reconsideration or new trial, or appeal is filed by any of the parties, the public prosecutor, or the Solicitor General. (4) Upon the finality of the decision, the court shall forthwith issue the corresponding decree if the parties have no properties. If the parties have properties, the court shall observe the procedure prescribed in Section 21 of this Rule. The entry of judgment shall be registered in the Civil Registry where the marriage was recorded and in the Civil Registry where the Family Court granting the petition for declaration of absolute nullity or annulment of marriage is located. Sec. 20. Appeal.—(1) Pre-condition.—No appeal from the decision shall be allowed unless the appellant has filed a motion for reconsideration or new trial within fifteen days from notice of judgment. (2) Notice of appeal.—An aggrieved party or the Solicitor General may appeal from the decision by filing a Notice of Appeal within fifteen days from notice of denial of the motion for reconsideration or new trial. The appellant shall serve a copy of the notice of appeal on the adverse parties. Sec. 21. Liquidation, partition and distribution, custody, support of common children and delivery of their presumptive legitimes.—Upon entry of the judgment granting the petition, or, in case of appeal, upon receipt of the entry of judgment of the appellate court granting the petition, the Family Court, on motion of either party, shall proceed with the liquidation, partition and distribution of the properties of the

spouses, including custody, support of common children and delivery of their presumptive legitimes pursuant to Articles 50 and 51 of the Family Code unless such matters had been adjudicated in previous judicial proceedings. Sec. 22. Issuance of Decree of Declaration of Absolute Nullity or Annulment of Marriage.—(a) The court shall issue the Decree after:

- Registration of the entry of judgment granting the petition for declaration of nullity or annulment of marriage in the Civil Registry where the marriage was celebrated and in the Civil Registry of the place where the Family Court is located;
- Registration of the approved partition and distribution of the properties of the spouses, in the proper Register of Deeds where the real properties are located; and
- The delivery of the children's presumptive legitimes in cash, property, or sound securities.

(b) The court shall quote in the Decree the dispositive portion of the judgment entered and attach to the Decree the approved deed of partition. Except in the case of children under Articles 36 and 53 of the Family Code, the court shall order the Local Civil Registrar to issue an amended birth certificate indicating the new civil status of the children affected. Sec. 23. Registration and publication of the decree; decree as best evidence.—(a) The prevailing party shall cause the registration of the Decree in the Civil Registry where the marriage was registered, the Civil Registry of the place where the Family Court is situated, and in the National Census and Statistics Office. He shall report to the court compliance with this requirement within thirty days from receipt of the copy of the Decree. (b) In case service of summons was made by publication, the parties shall cause the publication of the Decree once in a newspaper of general circulation. (c) The registered Decree shall be the best evidence to prove the declaration of absolute nullity or annulment of marriage and shall serve as notice to third persons concerning the properties of petitioner and respondent as well as the properties or presumptive legitimes delivered to their common children. Sec. 24. Effect of death of a party; duty of the Family Court or Appellate Court.—(a) In case a party dies at any stage of the proceedings before the entry of judgment, the court shall order the case closed and terminated, without prejudice to the settlement of the estate in proper proceedings in the regular courts. (b) If the party dies after the entry of judgment of nullity or annulment, the judgment shall be binding upon the parties and their successors in interest in the settlement of the estate in the regular courts. Sec. 25. Effectivity.—This Rule shall take effect on March 15, 2003 following its publication in a newspaper of general circulation not later than March 7, 2003. EN BANC A.M. No. 02-11-10-SC RE: PROPOSED RULE ON DECLARATION OF ABSOLUTE NULLITY OF VOID MARRIAGES AND ANNULMENT OF VOIDABLE MARRIAGES R E S O L U T I O N Acting on the letter of the Chairman of the Committee on Revision of the Rules of Court submitting for this Court's consideration and approval the Proposed Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages, the Court Resolved to APPROVE the same. The Rule shall take effect on March 15, 2003 following its publication in a newspaper of general circulation not later than March 7, 2003. March 4, 2003. Davide, Jr., C.J., Bellosillo, Puno, Mendoza, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio Morales, Callejo, Sr., and Azcuna, JJ., concur. Vitug, J., it is my understanding that neither Santos nor Molina has been made irrelevant, let alone necessarily overturned by the new rules. Panganiban, J., please see Dissenting Opinion on Rule relating to psychological incapacity. Ynares-Santiago, J., on leave. Corona, J., on official leave.

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