

BENCHBOOK FOR TRIAL COURT JUDGES

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PART ONE

PROCEDURE IN TRIAL COURTS

1. JURISDICTION IN CRIMINAL CASES

A. Introduction

1. Criminal Jurisdiction defined

Criminal jurisdiction is the authority to hear and try a particular offense and impose the punishment for it.[1]

2. Elements

2.1

The nature of the offense and/or penalty attached thereto; and

2.2

Commission of the offense within the territorial jurisdiction of the court.

The non-concurrence of either of these two (2) elements may be challenged by an accused at any stage of the proceedings in the court below or on appeal. Failing in one of them, a judgment of conviction is null and void.[2]

B. Requisites for its valid exercise:

1. Jurisdiction over the subject matter;[3]

Philippine courts have no common law jurisdiction or power, but only those expressly conferred by the Constitution and statutes and those necessarily implied to make the express effective.[4]

The question of jurisdiction of the court over the case filed before it is to be resolved on the basis of the law or statute providing for or defining its jurisdiction.[5]

The jurisdiction of a court to try a criminal action is determined not by the law in force at the time of the commission of offense but by the law in force at the time of the institution of the action.[6]

Once vested, jurisdiction cannot be withdrawn or defeated by a subsequent valid amendment of the information.[7]

2. Jurisdiction over the territory where the offense was committed; and

3. Jurisdiction over the person of the accused.

C. Jurisdiction Determined by Allegations of Complaint or Information

The averments in the complaint or information identify the crime charged and determine the court before which it must be tried.[8]

To determine the jurisdiction of the court in a criminal case, the complaint or information must be examined to ascertain if the facts set out therein and the penalty prescribed by law fall within the jurisdiction of the court regardless of the court's findings after the trial.[9]

D. Jurisdiction Over Complex Crimes

Jurisdiction over the whole complex crime is lodged with the trial court having jurisdiction to impose the maximum and most serious penalty imposable of an offense forming part of the complex crime.[10]

Where the imposable penalty for the physical injuries charged would come within the jurisdiction of the municipal trial court, while the fine for the damage to the property, would fall on the Court of First Instance (now the Regional Trial Court), the jurisdiction of the court to take cognizance of the case must be determined not by the corresponding penalty for the physical injuries charged but by the fine imposable for the damage to property resulting from the reckless imprudence.[11]

E. Crimes Punishable by Destierro

Where the imposable penalty is destierro such as that imposed in the case of concubinage in the crime of concubinage as defined in Article 334 of the Revised Penal Code, the case falls within the exclusive jurisdiction of the Municipal Trial Court, considering that in the hierarchy of penalties under Article 71 of the Revised Penal Code, destierro follows arresto mayor which involves imprisonment.[12]

II. TERRITORIAL JURISDICTION

1. General Rule

A criminal case should be instituted and tried in the place where the offense was committed or any of its essential ingredients took place.[13]

Exceptions:

- Under the 1987 Constitution, the Supreme Court may order a change of venue or place of trial to avoid a miscarriage of justice.[14]
- When the law provides otherwise – e.g., Presidential Decree No. 1606, Revising Presidential Decree No. 1486 Creating a Special Court to be known as 'Sandiganbayan' and for other purposes, as amended by Presidential Decree No. 1861.
- Case under the Revised Rules of Criminal Procedure, Rule 110, Section 15 (b), (c) and (d).

B. Jurisdiction Over the Person of Accused

Jurisdiction over the person of the accused is acquired either by his/her arrest or voluntary appearance in court.[15]

C. Criminal Jurisdiction Of Municipal Trial Courts (Republic Act 7691 Section 2 Amending Section 32 of Batas Blg. 129)

- Violations of city or municipal ordinances committed within their respective territorial jurisdictions
- All offenses punishable with imprisonment not exceeding six (6) years irrespective of the amount of the fine,

and regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value or amount thereof

- Offenses involving damage to property through criminal negligence regardless of the value of the property

Exceptions:

1. Cases falling within the exclusive original jurisdiction of the (a) Regional Trial Court, and (b) the Sandiganbayan

Examples:

(i)

Libel is punishable by prision correccional in its minimum and maximum period or fine or bail (Revised Penal Code, Article 354). Article 360, however, of the same code as amended, provides that the criminal and civil action for damages in cases of written defamation shall be filed in the court of first instance, etc.[16]

(ii)

Jurisdiction over Election Offenses

SEC. 268. Jurisdiction of courts. — The regional trial court shall have the exclusive original jurisdiction to try and decide any criminal action or proceedings for violation of this Code, except those relating to the offense of failure to register or failure to vote which shall be under the jurisdiction of the metropolitan or municipal trial courts. From the decision of the courts, appeal will lie as in other criminal cases.[17]

(iii)

Article X Jurisdiction Over Dangerous Drugs Cases

SEC. 39. Jurisdiction. — The Court of First Instance, Circuit Criminal Court, and Juvenile and Domestic Relations Court shall have concurrent original jurisdiction over all cases involving offenses punishable under this Act: Provided, That in cities or provinces where there are Juvenile and Domestic Relations Courts, the said courts shall take exclusive cognizance of cases where the offenders are under sixteen years of age.[18]

Thus, the aforementioned exception refers not only to Section 20 of Batas Blg. 129 providing for the jurisdiction of Regional Trial Courts in criminal cases, but also to other laws which specifically lodge in Regional Trial Courts exclusive jurisdiction over specific criminal cases, e.g., (a) Article 360 of the Revised Penal Code, as amended by Republic Act 1289 and 4363 on written defamation or libel; (b) Intellectual Property Code (Republic Act No. 8293), which vests upon Regional Trial Court exclusive jurisdiction over the cases therein mentioned regardless of the imposable penalty; and (c) more appropriately for the case at bar, Section 39 of Republic Act No. 6425, as amended by Presidential Decree No. 44, which vests on Courts of First Instance, Circuit Criminal Courts, and the Juvenile and Domestic Relations Courts concurrent exclusive original jurisdiction over all cases involving violations of said Act.[19]

2. Cases which fall under the original and exclusive jurisdiction of the Family Courts (Rep. Act No. 8369)

3. Cases which fall under the original and exclusive jurisdiction of the Sandiganbayan under Republic Act 8249

The Sandiganbayan has exclusive and original jurisdiction cases where the accused are those enumerated in subsection a, Section 4 and, generally, national and local officials classified as Grade '27' and higher under the Compensation and Position Classification Act of 1989 (Rep. Act No. 6758). Its jurisdiction over other offenses or felonies committed by public officials and employees in relation to their office is no longer determined by the prescribed penalty, viz., that which is higher than prison correccional or imprisonment for six (6) years or a fine of Php 6,000; it is enough that they are committed by those public officials and employees enumerated in subsection a, Section 4 above. However, it retains its exclusive original jurisdiction over civil and criminal cases filed pursuant to or in connection with Executive Order Nos. 1, (Creating the Presidential Commission on Good Government); 2 (Regarding the Funds, Moneys, Assets, and Properties Illegally Acquired or Misappropriated by Former President Ferdinand E. Marcos, Mrs. Imelda R. Marcos, Their Close Relatives, Subordinates, Business Associates, Dummies, Agents, or Nominees); 14 (Defining the jurisdiction Over Cases Involving the Ill-gotten Wealth of Former President Ferdinand E. Marcos, Mrs. Imelda R. Marcos, Members of Their Immediate Family, Close Relatives, Subordinates, Close and/or Business Associates, Dummies, Agents, and Nominees; and 14-A (Amending E.O. No. 14)[20]

Under Republic Act No. 8249, the Sandiganbayan partly lost its exclusive original jurisdiction in cases involving:

1. Violations of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act as amended);

2. Republic Act No. 1379 (An Act Declaring Forfeiture in Favor of the State Any Property Found to Have Been Unlawfully Acquired by any Public Officer or Employee and Providing for the Proceeding Therefor); and

3. Chapter II, Section 2, Title VII of the Revised Penal Code. (Article 210, Direct Bribery; Article 211, Indirect Bribery; and Article 212, Corruption of Public Officials).

Administrative Circular No. 09-94

Subject:

Guidelines in the implementation of Republic Act No. 7691, Entitled 'An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, Amending For the Purpose Batas Pambansa Blg. 129, Otherwise Known as the Judiciary Reorganization Act of 1980.'

For the guidance of the Bench and the Bar, the following guidelines are to be followed in the implementation of Republic Act No. 7691, entitled 'An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, Amending for the Purpose Batas Pambansa Blg. 129, Otherwise Known as the 'Judiciary Reorganization Act of 1980

x x x

3. The criminal jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts under Section 32 (2) of B.P. Blg. 129, as amended by R.A. 7691, has been increased to cover offenses punishable with imprisonment not exceeding six (6) years irrespective of the amount of the fine. As a consequence, the Regional Trial Courts have no more original jurisdiction over offenses committed by public officers and employees in relation to their office, where the offense is punishable by more than four (4) years and two (2) months up to six (6) years.

4. The provisions of Section 32 (2) of B.P. Blg. 129, as amended by R.A. No. 7691, apply only to offenses punishable by imprisonment or fine, or both, in which case the amount of the fine is disregarded in determining the jurisdiction of the court. However, in cases where the only penalty provided by law is a fine, the amount thereof shall determine the jurisdiction of the court in accordance with the original provisions of Section 32 (2) of B.P. 129 which fixed the original exclusive jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts over offenses punishable with a fine of not more than Php 4,000. If the amount of the fine exceeds Php 4,000, the Regional Trial Courts shall have jurisdiction, including offenses committed by public officers and employees in relation to their office, where the amount of the fine does not exceed Php 6,000.

However, this rule does not apply to offenses involving damage to property through criminal negligence which are under the exclusive original jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, irrespective of the amount of the imposable fine.

D. Cases Governed by the Summary Rules (Revised Rules on Summary Procedure)

- Violations of traffic laws, rules and regulations;
- Violations of the Rental Law;
- Violations of the municipal or city ordinances;
- Offenses committed by the public officers and employees in relation to their office, including those employed in government-owned-or-controlled corporations, where the penalty prescribed by law is imprisonment of not exceeding six (6) months, or a fine of not exceeding Php 1,000 or both;
- All other criminal cases where the penalty prescribed by law for the offense charged does not exceed six (6) months imprisonment, or a fine of not exceeding Php 1,000, or both, irrespective of other imposable penalties, accessory or otherwise, or of the civil liability arising therefrom.
- Offenses involving damage to property through criminal negligence where the imposable fine does not exceed Php 10,000.

E. Cases Governed by the Regular Rules

1. The regular rules are as follows:

1.1 Offenses committed by public officers and employees in relation to their office, including those employed in government-owned-or-controlled corporations, whether simple or complexed with other crimes, where the penalty prescribed by law imprisonment exceeding six (6) years or a fine exceeding Php 4,000 when the offender's position is below those enumerated above.

1.2 All other offenses where the imposable penalty prescribed by law is imprisonment exceeding six (6) years or a fine exceeding Php 1,000 but no more than Php 4,000 or both, regardless of other imposable accessory, or other penalties, including the civil liability arising from such offense or predicated thereon, irrespective of kind, nature,

value or amount thereof.[21]

1.3 Offenses involving damage to property through criminal negligence only, where the imposable fine exceeds Php 10,000.[22]

2. Notes

2.1 'Imposable Penalties' refers to the penalty prescribed by law for the offenses charged and not the penalty actually imposed on the accused after the plea of guilty on trial.

2.2 Any circumstances which may affect criminal liability must not be considered. The jurisdiction in court in a criminal case is determined by the penalty imposable, not the penalty ultimately imposed.[23]

Examples:

(i) Juan is charged with serious physical injuries resulting in deformity under Article 263, paragraph 3 of the Revised Penal Code which prescribed a penalty of prision correccional in its medium and maximum periods ranging from six (6) months and one (1) day to four (4) years and two (2) months. The fact that the Municipal Court is of the opinion that the penalty to be imposed should only be arresto mayor would not place the case under the Summary Rules.

(ii) If Juan is charged under Article 263 paragraph 2 of the Revised Penal Code with the person injured having lost the use of an arm, the penalty prescribed for such offense is prision correccional in its medium and maximum periods ranging from two (2) years, four (4) months and one (1) day to six (6) years. The case falls under the jurisdiction of the Regional Trial Court. The fact that the Regional Trial Court Judge is of the opinion that the penalty to be actually imposed should only be two (2) years and four (4) months would not divest the Regional Trial Court of its jurisdiction since it is the penalty prescribed by law that determines jurisdiction.

2.3 'Imposable accessory penalties' refers to the accessory penalties accompanying (1) prision correccional prescribed in Article 41, Revised Penal Code (RPC); (2) arresto mayor prescribed in Article 42 and (3) confiscation and forfeiture of the proceeds and instruments of the crime prescribed in Article 45, RPC.

2.4 Other imposable penalties

The additional penalty for habitual delinquency is not considered in determining which court shall have jurisdiction over a criminal case because such delinquency is not a crime.[24]

2.5 Civil liability irrespective of value or amount

Where the offense charged is within the exclusive competence of the municipal trial court by reason of the penalty (imprisonment, etc.), it shall have jurisdiction to try and decide the case even if the civil liability (such as actual, compensatory, etc.) claimed exceeds Php 20,000.[25]

2.6 Civil liability irrespective of kind of nature

Where the offense charged is within its exclusive competence by reason of the penalty prescribed therefor, a municipal trial court shall have jurisdiction to try and decide the cases irrespective of the kind or nature of the civil liability arising from the said offense.

Example:

A municipal trial court has jurisdiction over a case of simple seduction defined and penalized under Article 338 of the Revised Penal Code, as amended, with arresto mayor, regardless of the civil liability, such as support and acknowledgment of the offspring, that may be imposed under Article 345 of the same code.

F. Damage to Property Through Criminal Negligence

Article 365 of the Revised Penal Code, as amended, provides that when criminal negligence shall have resulted only in damage to property of another, the offender shall be punished by a fine ranging from an amount equal to the value of the said damages to three (3) times such value, which shall in no case be less than Php 25. Accordingly:

1. Where the amount or value of the damage to property alleged in the complaint or information does not exceed Php 3,333.33, the municipal trial court shall try and decide the case observing the Summary Rules.

Note: Three (3) times the said value does not exceed Php 10,000.

2. Where the amount or value of the damage to property alleged in the complaint or information is one ranging from Php 3,334 to Php 6,666.66, a municipal trial court shall try and decide the case observing Regular Rules.

Note: Three (3) times the said value exceeds Php 10,000.

The Summary Rules are not applicable to Batas Blg. 22 where the penalty of imprisonment prescribed exceeds the procedural limit of six (6) months provided in the Summary Rules.

G. Special Jurisdiction in Certain Cases

In the absence of all Regional Trial Judge in a province or city, any Metropolitan Trial Judge, Municipal Trial Judge, Municipal Circuit Trial Judge may hear and decide petitions for a writ of habeas corpus or applications for bail in criminal cases in the province or city where the absent Regional Trial Judges sit.[26]

III. PROSECUTION OF OFFENSES

1. Institution Of Criminal Action

1. Prosecution of offenses is instituted either by complaint or information.

The complaint or information shall be in writing, in the name of the People of the Philippines and against all persons who appear to be responsible for the offense involved.[27] A complaint is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated.[28] An information is an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court.[29]

2. Criminal actions shall be instituted as follows:

2.1 For offenses where a preliminary investigation is required pursuant to section 1 of Rule 112, by filing the complaint with the proper officer for the purpose of conducting the requisite preliminary investigation.[30] Except as provided in section 7 of Rule 110, a preliminary investigation is required to be conducted before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four (4) years, two (2) months and one (1) day without regard to the fine.[31]

2.2 For all other offenses, by filing the complaint or information directly with the Municipal Trial Courts and Municipal Circuit Trial Courts, or the complaint with the office of the prosecutor. In Manila and other chartered cities, the complaint shall be filed with the office of the prosecutor unless otherwise provided in their charters.[32]

The institution of the criminal action shall interrupt the running of the period of prescription of the offense charged unless otherwise provided in special laws.[33]

3. Who must prosecute criminal actions

All criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor. However, in Municipal Trial Courts or Municipal Circuit Trial Courts when the prosecutor assigned thereto or to the case is not available, the offended party, any peace officer, or public officer charged with the enforcement of the law violated may prosecute the case. This authority shall cease upon actual intervention of the prosecutor or upon elevation of the case to the Regional Trial Court.[34]

4. Intervention of Offended Party

Where the civil action for recovery of civil liability is instituted in the criminal action pursuant to Rule 111, the offended party may intervene by counsel in the prosecution of the offense.[35]

5. Prosecution of Private Crimes

5.1 The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse. The offended party cannot institute criminal prosecution without including the guilty parties, if both are alive, nor, in any case, if the offended party has consented to the offense or pardoned the offenders.

5.2 The offenses of seduction, abduction and acts of lasciviousness shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents or guardian, nor, in any case, if the offender has been expressly pardoned by any of them. If the offended party dies or becomes incapacitated before she can file the complaint, and she has no known parents, grandparents or guardian, the State shall initiate the criminal action in her behalf.

5.3 The offended party, even if a minor, has the right to initiate the prosecution of the offenses of seduction, abduction and acts of lasciviousness independently of her parents, grandparents, or guardian, unless she is incompetent or incapable of doing so. Where the offended party, who is a minor, fails to file the complaint, her parents, grandparents, or guardian may file the same. The right to file the action granted to parents, grandparents, or guardian shall be exclusive of all other persons and shall be exercised successively in the order herein provided, except as stated in the preceding paragraph.

5.4 No criminal action for defamation which consists in the imputation of any of the offenses mentioned above shall be brought except at the instance of and upon complaint filed by the offended party.

The prosecution for violation of special laws shall be governed by the provisions thereof.[36]

B. Distinction between control of prosecution and control of court

1. Control by Prosecution

1.1

What case to file[37]

1.2

Whom to prosecute[38]

1.3

Manner of prosecution[39]

1.4

Right of Prosecution to withdraw Information before arraignment even without notice and hearing[40]

2. Control by Court Once Case is Filed

2.1

Suspension of Arraignment[41]

2.2

Reinvestigation[42]

2.3

Prosecution by Fiscal[43]

2.4

Dismissal[44]

3. Limitations on Control by Court

3.1

Prosecution entitled to notice of hearing.[45]

3.2

Court must await result of petition for review.[46]

3.3

Prosecution's stand to maintain prosecution should be respected by court[47]

3.4

Ultimate test of court's independence is where the fiscal files a motion to dismiss or to withdraw information.[48]

3.5

Court has authority to review (power of judicial review) the Secretary's recommendation and reject it if there is grave abuse of discretion.[49]

The Resolution of the Secretary of Justice may be appealed to the Office of the President only in offenses punishable by death or reclusion perpetua.[50]

3.6 To reject or grant motion to dismiss, the court must make own independent assessment of evidence.[51]

3.7 Judgment is void if there is no independent assessment and finding of grave abuse of discretion[52]

C. Testing Sufficiency Of Complaint Or Information

A complaint or information is sufficient if it states the name of the accused;[53] the designation of the offense given by the statute;[54] the acts or omissions complained of as constituting the offense;[55] the name of the offended party;[56] the approximate date of the commission of the offense;[57] and the place where the offense was committed.[58]

When an offense is committed by more than one person, all of them shall be included in the complaint or information.[59]

D. Strict Scrutiny in Heinous Crimes

1. Cause of the accusation

The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.[60]

b. Pursuant to Section 11 of the amendatory statute, the death penalty may be imposed in rape cases under the last paragraph of Article 335 of the Revised Penal Code, when the rape is committed with any of the following attendant circumstances:

1. When the victim is less than eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

2. When the victim is under the custody of the police or military authorities.

3. When the rape is committed in full view of the husband, parent, any of the children or other relative within the third degree of consanguinity.

4. When the victim is a religious or a child below seven (7) years old.

5. When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.

6. When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.

7. When by reason on the occasion of the rape, the victim has suffered permanent physical mutilation.[61]

The need to allege qualifying circumstances to justify finding of qualified rape and the imposition of death penalty was stressed in several cases. The additional attendant circumstances introduced by Rep. Act No. 7659 should be considered as special qualifying circumstances distinctly applicable to the crime of rape, and if not

pleaded as such, could only be appreciated as generic aggravating circumstances.[62]

Without allegation of relationship in cases of statutory rape, proof alone of relationship unless specifically alleged in the information would not warrant imposition of the death penalty.[63]

Thus, the concurrence of the minority of the victim and her relationship of the offender is a special qualifying circumstance which should both be alleged[64] and proved[65] with certainty in order to warrant the imposition of the death penalty. In these cases complainant never said she was below eighteen (18) years of age when she was allegedly raped by her father on any of the dates stated in the complaint.[66]

Where the information alleged the accused, who is the stepfather of complainant, succeeded in having carnal knowledge of the latter who was then below eighteen (18) years of age, the evidence shows that the accused is not the complainant's stepfather because he and complainant's mother were not really married but only lived in common law relationship. Thus, although a husband is subject to punishment by death in case he commits rape against his wife's daughter, the death penalty cannot be imposed because the relationship alleged in the information is different from that actually proven.[67]

E. Duplicity of the Offense and Continuing Crimes

1. Duplicity of the offense

A complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses.[68]

2. Continuing Crimes: The Principle of Delito Continuado

Santiago v. Garchitorena

G. R. No. 109266, December 2, 1993, 228 SCRA 214

The original Information charged petitioner with performing a single criminal act – that of her approving the application for legalization of aliens not qualified under the law to enjoy such privilege. The 32 Amended Informations reproduced verbatim the allegation of the original Information, except that instead of the word 'aliens' in the original Information, each amended Information states the name of the individual whose stay was legalized.

The 32 Amended Informations charge what is known as delito continuado or 'continued crime' and sometimes referred to as 'continuous crime'.

For Cuello Calon, the delito continuado to exist there should be a plurality of acts performed during a period of time; unity of penal provision violated; and unity of criminal intent or purpose, which means that two or more violations of the same penal provisions are united in one and the same intent or resolution leading to the perpetration of the same criminal purpose or aim.

According to Guevarra, in appearance, a delito continuado consists of several crimes but in reality there is only one crime in the mind of the perpetrator.

2.1 Examples of Delito Continuado

2.1.1 The single larceny rule

- The theft of 13 cows belonging to two different owners committed by the accused at the same place and at the same period of time;[69]

- The theft of six roosters belonging to two different owners from the same coop and at the same period of time;[70]

- The theft of two roosters in the same place and on the same occasion;[71]
- The illegal charging of fees for services rendered by a lawyer every time he collects veterans' benefits on behalf of a client, who agreed that the attorney's fees shall be paid out of said benefits;[72]
- Illegal approval of the application for the legalization of stay of 32 aliens, constitutes only one crime.[73]

2.1.2 The concept of delito continuado was not applied in the following cases:

- Two estafa cases, one of which was committed during the period from January 19 to December 1995 and the other from January 1956 to July 1956. The said acts were committed on two different occasions.[74]
- Several malversations committed in May, June and July, 1936, and falsifications to conceal the same offenses committed in August and October 1936. The malversations and falsifications 'were not the result of only one purpose or of only one resolution to embezzle and falsify xxx.'[75]
- Two estafa cases, one committed in December 1963 involving the failure of the collector to turn over the installments for a radio and the other in June 1964 involving the pocketing of the installments for a sewing machine.[76]
- 75 estafa cases committed by the conversion by the agent of collections from customers of the employer made on different dates.[77]
- Robbery and fencing are two separate crimes. Principle of Delito Continuado is not applicable.[78]
- In a single Information for murder for shooting three persons where evidence did not show that a single shot had slain three different persons, the appellant was properly held liable for three separate murders and sentenced to three separate penalties of reclusion perpetua.[79]
- Several victims dying from separate shots constitute separate offenses and if there is no objection for duplicity, the accused should be convicted of all offenses charged in one Information.[80]

It is not the act of pressing the trigger like a Thompson submachine gun that determines the number of felonies committed, but the number of bullets which actually produced them.[81] The firing of several bullets by the accused although resulting from one continuous burst of gunfire, constitutes several acts. Each person fell by different shots, is a victim of a separate crime of murder.[82]

3. Exceptions to Rule On Duplicity

The rule on duplicity of offenses does not apply where the law prescribes a single penalty for various offenses such as a complex crime under Article 48 of the Revised Penal Code or special complex crime such as Robbery with Homicide or with Rape or Rape with Homicide, or Rebellion complexed with Murder, Robbery and Kidnapping.

4. Rule on Complex Crimes

The precise language of the statute used in alleging the commission of the crime is not necessary as long as in charging the commission of a complex offense like that of Robbery with Homicide, the information alleges each element of the component offenses with the same precision that would be necessary if they were made the subject of a separate prosecution.[83]

Thus, although the phrase by reason or on occasion of the robbery as provided for by the Revised Penal Code, was not literally used in the recital of facts alleging the commission of the two crimes of Robbery with Homicide, the Information as filed sufficiently and distinctly alleges the commission of the two crimes of robbery and homicide

and adequately informs the accused of the crime charged.[84]

Under Article 48 of the Revised Penal Code, when a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

The throwing of a hand grenade at the President with the intention of killing him resulting in the death and injuries of several persons constitutes the complex crime of Murder with Attempted Murder.[85]

For a criminal complaint or Information to charge the commission of a complex crime, the allegations contained therein do not necessarily have to charge a complex crime as defined by law. It is sufficient that the information contains allegations which state that one offense was a necessary means to commit the other. The information in question in the present case contains allegations properly charging the commission of the complex crime of incriminatory machinations through unlawful arrest, and the court a quo committed error when it ordered its dismissal.[86]

5. No Duplicity In Rape With Homicide

There is no duplicity in an Information for Rape with Homicide.[87]

Where seven persons committed Rape with Homicide in conspiracy with each other, every one of the seven accused may separately be charged for rape with homicide.[88]

6. No Duplicity In Charge Of Estafa

There is no duplicity in a charge of Estafa committed by the accused for misappropriation of the purchase price of several lots owned by the Hometrust Corporation which were fraudulently received by the accused against seven lot buyers on the pretext that she was authorized to do so and which she misapplied to her personal use instead of remitting the money to the owner corporation. The crime of estafa committed against the corporation and those committed against the lot buyers are definitely separate felonies. They were dictated by different criminal intents, committed under different modes of commission provided by the law on estafa, perpetrated by different acts, consummated on different occasions, and caused injury to different parties.[89]

7. Illegal Possession of Firearm and Unlawful Killing with the Use Thereof

In case Homicide or Murder is committed with the use of unlicensed firearm, such use of unlicensed firearm shall be merely considered as aggravating.[90]

Republic Act No. 8294 amended PD No. 1866 abandoned previous rulings that qualified use of firearms and murder are separate offenses. Under the present rule, the unauthorized use of licensed or unlicensed firearm is simply an aggravating circumstance in the commission of homicide or murder and no longer a separate offense, effectively modifying *People v. Quijada* and its progeny. [91]

Thus, it has been held that the principle of absorption does not apply to illegal possession of firearms in connection with the crime of Subversion but simply describes the mode or manner by which the violation of Section 1 of P.D. 1866 was committed so as to qualify the penalty of death.[92] The charge should therefore be amended to simple Illegal Possession of Firearm, and was accordingly deemed amended by the Supreme Court.[93] It should, however, be noted that under existing laws (Rep. Act no. 8294), if Homicide or Murder is committed with the use of an unlicensed firearm, such use of unlicensed firearm shall be considered merely as an aggravating circumstance and cannot be the subject of a separate prosecution.[94]

It does not, however, mean that there can no longer be any prosecution for the crime of illegal possession of

firearm. In general, all pending cases involving illegal possession of firearm should continue to be prosecuted and tried if no other crimes expressly indicated in Republic Act No. 8294 are involved (murder or homicide under Section 1 and rebellion, insurrection, sedition or attempted coup d'état under Section 3).[95]

8. Reckless Imprudence Cases

Reckless imprudence resulting in slight physical injuries and damage to property is not a complex crime and cannot be the subject of a single information, they are separate offenses subject to distinct penalties.[96]

The two offenses may, however, be consolidated since under the expanded jurisdiction of the municipal trial courts, damage to property through reckless imprudence now falls under its jurisdiction.[97]

9. Amendment or Substitution

A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his/her plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party.

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with section 19, Rule 119, provided the accused shall not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial.[98]

III. PROSECUTION OF CIVIL ACTION

A. Basic Rule

Rules of Court
Rule 111

Institution of criminal and civil actions. –

(a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.

The reservation of the right to institute separately the civil action shall be made before the prosecution starts presenting its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.

When the offended party seeks to enforce civil liability against the accused by way of moral, nominal, temperate, or exemplary damages without specifying the amount thereof in the complaint or information, the filing fees therefore shall constitute a first lien on the judgment awarding such damages.

Where the amount of damages, other than actual, is specified in the complaint or information, the corresponding filing fees shall be paid by the offended party upon the filing thereof in court.

Except as otherwise provided in these Rules, no filing fees shall be required for actual damages.

No counterclaim, cross-claim or third-party complaint may be filed by the accused in the criminal case, but any cause of action which could have been the subject thereof may be litigated in a separate civil action.

(b) The criminal action for violation of Batas Pambansa Blg. 22 shall be deemed to include the corresponding civil action. No reservation to file such civil action separately shall be allowed.

Upon filing of the aforesaid joint criminal and civil actions, the offended party shall pay in full the filing fees based on the amount of the check involved, which shall be considered as the actual damages claimed. Where the complaint or information also seeks to recover liquidated, moral, nominal, temperate or exemplary damages, the offended party shall pay additional filing fees based on the amounts alleged therein. If the amounts are not so alleged but any of these damages are subsequently awarded by the court, the filing fees based on the amount awarded shall constitute a first lien on the judgment.

Where the civil action has been filed separately and trial thereof has not yet commenced, it may be consolidated with the criminal action upon application with the court trying the latter case. If the application is granted, the trial of both actions shall proceed in accordance with in section 2 of this Rule governing consolidation of the civil and criminal actions.

The 2000 Rules on Criminal Procedure deems as instituted with the criminal action only the civil liability arising from the offense charged. The civil liability is deemed instituted – not merely 'impliedly' instituted – with the institution of the criminal action. The independent civil actions under Articles 32, 333, 34 and 2176 of the Civil Code are no longer deemed or impliedly instituted with the criminal action or considered as waived even if there is no reservation. The reservation applies only to the civil liability arising from the offense charged. The employer may no longer be held civilly liable for quasi-delict in the criminal action as ruled in *Maniago v. Court of Appeals*,^[99] *San Ildefonso Lines, Inc. v. Court of Appeals*^[100] and all other similar cases, since quasi-delict is not deemed instituted with the criminal. If at all, the only civil liability of the employer in the criminal action would be his/her subsidiary liability under the Revised Penal Code. The rule has also done away with third party complaints and counterclaims in criminal actions. Third-party complaints and counterclaims in criminal actions have to be ventilated in a separate civil action.

B. Civil Actions Not Based on Crime Not Extinguished

Acquittal in a criminal action bars the civil action arising therefrom where the judgment of acquittal holds that the accused did not commit the criminal acts imputed to him.^[101]

The civil liability that is deemed extinguished is the civil liability based on crime. But not the civil liability based on sources of obligation other than the criminal offense although arising from the same act or omission. Article 29 of the Civil Code expressly provides that when the accused in a criminal prosecution is acquitted on the ground that his/her guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted. Such action requires only a preponderance of evidence.

The civil liability therefor under Articles 32, 33 34 and 2176 of the Civil Code or those where the source of civil obligation is not based on the criminal offense is not affected by the result of the criminal action.

In other words, the extinction of the civil liability referred to in par. (e) of Section 3, Rule 111, (1964 Rules) refers exclusively to the civil liability founded on Article 100 of the Revised Penal Code whereas the civil liability for the same act considered as a quasi-delict only and not as a crime is not extinguished even by a declaration in the criminal case that the criminal act charged has not happened or has not been committed by the accused. Briefly stated, culpa aquiliana includes voluntary and negligent acts which may be punishable by law. It results, therefore, that the acquittal of Reginald Hill in the criminal case has not extinguished his/her liability for quasi-delict, hence that acquittal is not a bar to the instant action against him.^[102]

The only civil liability that may thus be imposed in a criminal action is that arising from and consequent to the criminal liability of the accused on the principle that every person criminally liable is also civilly liable.[103] This includes restitution, reparation of damages caused and indemnification of consequential damages.[104] Complementary thereto, are the subsidiary civil liability of innkeepers, tavern keepers and proprietor of establishments,[105] employers, teachers, persons and corporations engaged in any kind of industry, for felonies committed by their servants, pupils, workmen, apprentices, employees in the discharge of their duties.[106]

C. Criminal Actions To Recover Civil Liability Arising From Delict and Civil Actions Based on Quasi-Delict May Proceed Simultaneously

A separate civil action for damages lies against the offender in a criminal act, whether or not he is criminally prosecuted and found guilty or acquitted, provided that the offended party is not allowed, if he is actually charged also criminally, to recover damages on both sides, and would be entitled in such eventuality only to the bigger award of the two, assuming the awards made in the two cases vary.[107]

D. Extinction Of The Penal Does Not Carry With It Extinction Of The Civil

But while every person criminally liable is also civilly liable, the converse is not true. Extinction of the penal does not carry with it extinction of the civil unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist.[108] Similarly, a final judgment rendered in a civil action absolving the defendant from the civil liability is no bar to a criminal action[109] unless the civil action is a prejudicial question which involves an issue similar or intimately related to the issue raised in the criminal, the resolution of which determines whether or not the criminal action may proceed.[110]

IV. PROCEDURAL CHECKLISTS ON CRIMINAL PROCEDURE

1. For Cases Cognizable By The Municipal Trial Courts

Checklist I

Things To Check/Do Upon Receipt Of Complaint Or Information

1. Check if the offense charged is within court's jurisdiction.
2. If the offense is not within the court's jurisdiction, dismiss complaint/information, unless the complaint presents a case for preliminary investigation by the Municipal Trial Court.

When Case is for Preliminary Investigation

1. When the case is for preliminary investigation by the Municipal Trial Court, check the complaint as well as accompanying affidavits and other supporting documents if there is ground to continue with the inquiry.
 - 1.1 If there is no such ground, dismiss the complaint.
 - 1.2 If there is such ground, conduct preliminary investigation following the procedure in Rule 112, Section 3.
2. Without waiting for the conclusion of the preliminary investigation, the investigating judge may issue a warrant of arrest, after conducting an examination under oath of the complainant and his/her witnesses in the form of searching questions and answers to determine existence of probable cause and the necessity of placing the respondent under immediate custody so as not to frustrate the ends of justice.

Note: For purposes of issuing a warrant of arrest during preliminary investigation, it is mandatory that an examination in writing and under oath by searching questions and answers should be conducted by the investigating judge.[111]

2.1 If there is probable cause but no such 'necessity,' do not issue arrest warrant; only issue the subpoena to respondent, attaching thereto a copy of the complaint, affidavits, and other supporting documents with the directive to submit counter affidavits within ten (10) days from receipt of order.

2.1.1 Illustrative case: Where no such 'necessity' exists

The issuance of warrant of arrest by the Municipal Judge conducting preliminary investigation is left to his/her sound judgment and discretion. The Supreme Court sustained Judge Samulde's refusal to issue an arrest warrant, holding that under the applicable rule, it is not obligatory, but merely discretionary, upon the investigating judge to issue a warrant for the arrest of the accused, for the determination of whether a probable cause exists and whether it is necessary to arrest the accused in order not to frustrate the ends of justice, is left to his/her sound judgment or discretion. In this particular case, since the robbery charge was offshoot of a boundary dispute between the two property owners, the investigating judge did not believe there was any danger of the accused absconding before the filing of the information against him by the fiscal, hence, he found no need to place him under immediate custody.[112]

2.2 If, however, his/her findings and recommendations are affirmed by the provincial fiscal or city prosecutor or by the Ombudsman or his/her deputy, and the corresponding information is filed, he shall issue a warrant of arrest.[113]

3. If there is possible cause and such 'necessity', issue arrest warrant.

When Case is for Trial on the Merits

1. If the case presented by complaint or information is within the jurisdiction of the Municipal Trial Court, check if case is for 'summary procedure' or 'regular procedure.'

1.1 Summary Procedure Cases

1.1.1 Make preliminary determination whether to dismiss case outright for being patently without basis or merit or to require further proceedings to be taken.

1.1.2 When further proceedings are required, set the case for immediate arraignment of the accused who is under custody and if he pleads not guilty, render judgment forthwith; if he pleads not guilty, he shall be released without bail unless he is a recidivist, fugitive from justice, is charged with physical injuries, does not reside in the place where the violation of the law or ordinance was committed, or has no known residence.

1.2 Regular Procedure Cases

1.2.1 If the case is commenced by complaint or information, the procedure in section 3 (a), Rule 112 shall be observed;

1.2.2 If within ten (10) days from the filing of the complaint or information, the judge after evaluating the evidence or after personally examining in writing and under oath the complainant and his/her witnesses, the judge finds no probable cause he shall dismiss the case unless it is deemed necessary to require submission of affidavits of witnesses to aid him in arriving at the conclusion as to the existence of probable cause which should be done within ten (10) days from notice.

1.2.3 If the case is commenced by complaint, the court may either evaluate the supporting affidavits or personally examine in writing and under oath the complainant and his/her witnesses in the form of searching questions and answers to determine if there is probable cause; if there is, issue arrest warrant; otherwise, dismiss the case outright.

1.2.4 The court may, however, opt not to issue a warrant of arrest or a commitment order if the accused had already been arrested, and hold him for trial. However, if the judge is satisfied that there is no necessity for placing the accused under custody, he may issue a summons instead of a warrant of arrest. This refers only to cases which do not require preliminary investigation.[114]

1.2.5 'Searching Questions and Answers' means only, taking into consideration the purpose of the preliminary examination which is to determine whether there is a reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof so that a warrant of arrest may be issued and the accused held for trial, such questions as have tendency to show the commission of a crime and the perpetrator thereof. What would be searching questions would depend on what is sought to be inquired into, such as: the nature of the offense, the date, time, and the place of its commission, the possible motives for its commission; the subject, his/her age, education, status, financial and social circumstances, his/her attitude toward the investigation, social attitudes, opportunities to commit the offense; the victim, his/her age, status, family responsibilities, financial and social circumstances, characteristics, etc. The points that are subject of inquiry may differ from case to case. The questions, therefore, must to a great degree depend upon the judge making the investigation.

1.2.6 Form of Searching Questions for Simple Theft

(The witness is duly sworn to and gives his/her name and other personal circumstances)

Q. - Are you the same complainant in this complaint for simple theft?

A. -

Q. - Describe the ring allegedly stolen from you.

A. -

Q. – When and how did you learn that your ring was stolen?

A. –

Q. – When and how did you come to know the accused?

A. –

Q. – Where does the accused reside?

A. –

Q. – Do you know the accused's present whereabouts?

A. –

Q. – Is the accused related to you by blood or marriage?

A. –

Q. – Did you have any kind of dealing with the accused before the date in question? If so, what?

A. –

Q. – Do you know of any reason why the accused would take your ring without your consent?

A. –

Q. – Do you owe the accused anything?

A. –

Q. – When and how did you acquire the ring?

A. –

Q. – What is the approximate value of the ring?

A. –

Q. – Did you actually witness the taking of your ring?

A. –

Q. – State the name or names of the person or persons, if any, who know the alleged theft.

A. –

Q. – Do you wish to state anything else?

A. -

If the judge still finds no probable cause despite the additional evidence, he shall, within ten (10) days from its submission or expiration of said period, dismiss the case. When he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused had already been arrested, and hold him for trial. However, if the judge is satisfied that there is no necessity for placing the accused under custody, he may issue summons instead of a warrant of arrest.

Checklist II

Things To Check/Do After The Issuance Of Arrest Warrant And Before Trial Stage

1. If arrest warrant was properly released and a report has been properly submitted but accused could not be apprehended for a considerable length of time, issue alias arrest warrant and order for archiving of case.

1.1 If report is submitted with accused being arrested and he does not post bail forthwith, issue corresponding commitment pending trial and have it served on warden or head of the jail or place of detention, along with the corresponding notice to produce the accused before the court for arraignment on the date and time already fixed by the court.

1.2 In case of a summary procedure case and accused is arrested under an arrest warrant issued for failure of accused to appear when required (per second paragraph Section 10 of the Summary Rule), set case for immediate arraignment, the warden or head of the jail or place of detention likewise being served with corresponding commitment pending trial and notice to produce the accused for arraignment before the court.

1.3 If accused files bail bond, cash bond deposit, or recognizance, check sufficiency of documentation, particularly the corresponding signatures on the requisite documents, and if in order, approve it and issue corresponding release order for immediate service on officer concerned.

2. At the scheduled arraignment, judge shall inform accused who appears without counsel of his/her right to counsel and shall ask accused if he desires to have one.

2.1 In proper cases, appoint counsel de oficio for the accused who appears without counsel.

3. Arraignment must be in open court; accused must be furnished a copy of the complaint or information; accused must be present at the arraignment and plea must be made of record; if accused refuses to plead, or he makes a conditional plea of guilty (e.g., entering a plea of guilt provided the penalty to be meted shall only be a fine), then enter a plea of not guilty for the accused.

4. If accused wants to plead guilty to lesser offense, both prosecutor and offended party must consent thereto.

5. If accused pleads guilty, impose corresponding sentence, unless court desires to receive evidence to determine penalty to be imposed, including civil indemnity in the proper cases.

6. If the plea is not guilty, set case for trial.

7. After arraignment, as a measure to expedite the trial, where the accused and counsel agree, conduct a pre-trial conference, without impairing the rights of the accused, on the following matters, to wit: (a) plea bargaining; (b) stipulation of facts; (c) marking for identification of parties evidence; (d) waiver of objections to admissibility of evidence; and, (e) such other matters as will promote a fair and expeditious trial.

7.1 After pre-trial, issue order reciting the actions taken, the facts stipulated, and evidence marked.

7.2 Check if agreement/s or admission/s made entered during pre-trial were properly reduced to writing and duly signed by the parties charged and their counsel.

B. For Cases Cognizable By The Regional Trial Courts

Checklist I

Things To Do Upon Receipt Of Complaint Or Information Up To Issuance Of The Warrant Of Arrest

1. Check if, on the face of the information/complaint, the court has jurisdiction over the case; otherwise, dismiss it and order the release of the accused if under detention insofar as the case is concerned.

2. Check if a claim for damages other than actual alleged in the information/complaint, and if in the affirmative, ascertain whether appropriate filing/docket fee for said claim has been paid to the clerk of court. If the requisite filing/docket fees have not been paid at the time of the filing of the information/complaint, issue an order to the offended party to pay the requisite filing/docket fees within a reasonable time.

3. If accused is detained, issue a commitment/detention order to the warden/jailers; if the accused is at large, issue a warrant for his/her arrest, in accordance with the succeeding steps.

4. When warrant of arrest may issue

Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the Complaint or Information was filed pursuant to section 7 of

the Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information.

5. If not satisfied upon the filing of information/complaint that probable cause exists, order the prosecutor to submit the records of the case and if based thereon, there is probable cause, issue a warrant of arrest. Otherwise, dismiss the case.

6. If the charge is bailable, fix the amount of bail either in the commitment/detention order or warrant of arrest.

Checklist II

Incidents After Issuance Of Warrant Of Arrest Or Commitment Order

1. Once the accused is arrested or otherwise taken into custody, issue a commitment order and set the case for arraignment.

2. When the accused is under preventive detention, his/her case shall be raffled and its records transmitted to the judge to whom the case was raffled within three (3) days from the filing of the information or complaint. The accused shall be arraigned within ten (10) days from the date of the raffle. The pre-trial conference shall be held within ten (10) days after arraignment.[115]

3. Unless a shorter period is provided by special law or Supreme Court circular, the arraignment shall be held within thirty (30) days from the date the court acquires jurisdiction over the person of the accused. The time of the pendency of a motion to quash or for a bill of particulars or other causes justifying suspension of the arraignment shall be excluded in computing the period.[116]

4. If there is failure to execute the warrant of arrest or no report is made within ten (10) days from receipt of the warrant by the executing officer, issue an alias arrest warrant and order the archiving of the case, furnishing a copy of the said order to the complainant.

5. If bail is a matter of right, and the accused files bail, ascertain if all the requirements for the bail are complied with, as follows:

5.1 Cash Bond

5.1.1 The official receipt or certificate of deposit of the amount of bail fixed by the court who filed the information/complaint, issued by the government officer concerned, is attached to records of the case.

5.1.2 The written undertaking, executed by the accused containing all the conditions contained in Section 2 of Rule 114 of the Revised Rules on Criminal Procedure, as amended, is attached to the records of the case.

5.2 Corporate Surety

5.2.1 Photocopy of the Certification issued by the Supreme Court, accompanied by the photocopies of receipts of payment by the surety company of the requisite fees to the Supreme Court is attached to the bond.

5.2.2 Certificate of the Clerk of Court of the Regional Trial Court where the case is filed and pending showing that the bonding company does not have any pending obligations/liabilities to the government, consisting of writs of execution and/or confiscated bonds in criminal cases and that bonding company was issued a Certificate of Authority by the Insurance Commission and presently updating its obligation.

5.2.3 Certificate of Authority issued by the Insurance Commission.

5.3 Property Bond

5.3.1 Affidavit of surety/ sureties taken before the judge or submitted to the judge, stating therein that each of the sureties possesses the qualifications as provided for in Section 12 of Rule 114 of the 2000 Rules on Criminal Procedure and describing the property offered as bond for the accused, the nature of the title of the property, the encumbrances thereon, the number and amount of other bonds entered into by him/them and remaining undischarged, and his/her/their other liabilities, if any.

5.3.2 Owner's duplicate of the original Certificate of Title of the surety/sureties covering the property offered as bond, if registered under the Torrens system or, the Owner's copy of the declaration of Real Property, if unregistered.

5.3.3 Certificates of Payment of Realty Taxes on the property offered as bond. If the property is sufficient, and the requisite affidavit is submitted to the court, approve the bond and order the accused to cause the annotation of the lien, within ten (10) days from the receipt by the accused of the court, at the back of the title to the property, if registered, or in the Registration Book, if unregistered, and on the corresponding tax declaration in the Office of the Provincial and Municipal Assessor concerned.

Upon compliance by the accused of order of the court, issue an order releasing the accused from detention.

6. In either case, the accused should submit photographs (passport size) taken within the last six (6) months showing the face, the left and right profiles of the accused and attached to the records, and the written undertaking containing the conditions set forth in Section 2 of Rule 114 of the 2000 Rules on Criminal Procedure, as amended.

7. If the accused fails to comply with the order of the court for the annotation of the lien and for the registration of the annotation, cancel the property bond.

8. If the accused applies for release on recognizance, set the hearing of the application and give reasonable notice of the hearing to the prosecutor with the requirement to submit the comment and recommendation in the application.

8.1 Definition of Recognizance

An obligation of record, entered into before some court or magistrate duly authorized to take it, with the condition to do some particular act, the most usual condition in criminal cases being the appearance of the accused for trial; a contract between the sureties and the State for the production of the principal at the required time.[117]

8.2 Recognizance may be allowed in the following instances:

8.2.1 The charge against the accused is for violation of a municipal or city ordinance, a light felony and/or a criminal offense prescribed penalty for which is not higher than six (6) months imprisonment and/or a fine of Php 2,000, or both, provided the accused has established, to the satisfaction of the court, the inability to post the required cash or bail bond.

8.2.2 When the accused has been in custody for a period equal to or more than the possible maximum imprisonment of the offense charged to which he/she may be sentenced. However, if the maximum penalty to which the accused is sentenced is destierro, he shall be released after thirty (30) days of preventive imprisonment.

8.2.3 At the discretion of the Court, if the accused has been in custody for a period equal to or more than the minimum of the principal penalty prescribed for the offense charged, without applying the Indeterminate Sentence Law or any modifying circumstances.

8.2.4 At the discretion of the court, and, upon recommendation of the Department of Social Welfare and Development (DSWD) or other agency or agencies, if the accused is a youthful offender over nine (9) but under

eighteen (18) years at the same time of the commission of the offense charged, in which case, the accused may be released on his/her own cognizance or to the custody of his/her parents or of a suitable person who shall be punishable for the appearance of the accused when required.

9. Where the accused is charged with a capital offense which, under the law at the time of the application for bail is punishable by death or reclusion perpetua, and the accused files an application for bail, give reasonable notice of the hearing to the prosecutor or require him to submit his/her recommendation.

10. If the prosecutor, where bail is a matter of discretion, objects to the application of the accused for bail, hold in abeyance resolution of the application until the arraignment of the accused.

11. If the case is not dismissed and the accused is under arrest, order the Branch Clerk of Court to schedule the arraignment of the accused with notice to the complainant.

3. Common Procedures in First and Second Level Courts

Checklist I

Things To Do At The Arraignment Of The Accused[118]

1. The accused must be arraigned before the court where the Complaint or Information was filed or assigned for trial. The arraignment shall be made in open court by the judge or clerk by furnishing the accused with a copy of the Complaint or Information, reading the same in the language or dialect known to him, and asking him whether he pleads guilty or not guilty. The prosecution may call at the trial witnesses other than those named in the Complaint or Information.

2. The accused must be present at the arraignment and must personally enter his/her plea. Both arraignment and plea shall be made of record, but failure to do so shall not affect the validity of the proceedings.

3. Before the reading of the Information, where the accused is not assisted by counsel de parte, inform him/her of his/her right to counsel of his own choice and inquire from him if he/she desires to engage his/her own counsel. Unless the accused is allowed to defend himself in person, and the accused is amenable to a counsel de oficio, appoint a competent and responsible counsel de oficio for him.

4. Whenever a counsel de oficio is appointed by the court to defend the accused at the arraignment, he shall be given a reasonable time to consult with the accused as to his/her plea before proceeding with the arraignment.

5. When the accused refuses to plead or makes a conditional plea, a plea of not guilty shall be entered for him.

6. When the accused pleads guilty but presents exculpatory evidence, his/her plea shall be deemed withdrawn and a plea of not guilty shall be entered for him.

7. The private offended party shall be required to appear at the arraignment for purposes of plea-bargaining, determination of civil liability, and other matters requiring his/her presence. In case of failure of the offended party to appear despite due notice, the court may allow the accused to enter a plea of guilty to a lesser offense which is necessarily included in the offense charged with the conformity of the trial prosecutor alone.[119] Unless the civil action has been reserved, waived or otherwise instituted ahead, reset the case for the reception of evidence to determine the civil liability and the impossible penalty.

8. Plea of guilty to a lesser offense

At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after

withdrawing his/her plea of not guilty. No amendment of the complaint or information is necessary.[120]

9. Plea of guilty to capital offense; reception of evidence

When the accused pleads guilty to a capital offense, the court (a) shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his/her plea and (b) shall require the prosecution to prove his/her guilt and the precise degree of culpability. The accused may present evidence in his/her behalf.

10. Plea of guilty to non-capital offense; reception of evidence, discretionary

When the accused pleads guilty to a non-capital offense, the court may receive evidence from the parties to determine the penalty to be imposed.

11. Withdrawal of improvident plea of guilty

At any time before the judgment of conviction becomes final, the court may permit an improvident plea of guilty to be withdrawn and be substituted by a plea of not guilty.

12. If a 'Not Guilty' plea is entered, schedule the pre-trial of the case with due notice to the offended party/arresting officer.

13. If the accused is under preventive detention, the pre-trial conference of the case shall be held within ten (10) days after arraignment.

14. In other cases, unless a shorter period is provided by special law or Supreme Court circular, the arraignment shall be held within thirty (30) days from the date the court acquires jurisdiction over the person of the accused. The time of the pendency of a motion to quash or for a bill of particulars or other causes justifying suspension of the arraignment shall be excluded in computing the period.[121]

15. If the accused appears to be suffering from an unsound mental condition which effectively renders him/her unable to fully understand the charge against him/her and to plead intelligently thereto, suspend the arraignment and order the accused's mental examination; and if necessary, accused's confinement for such purpose.

16. Upon motion of the accused, suspension of his/her arraignment may be allowed on any of the following grounds:

16.1 The accused appears to be suffering from an unsound mental condition which effectively renders him unable to fully understand the charge against him and to plead intelligently thereto. In such case, the court shall order his/her mental examination and, if necessary, his/her confinement for such purpose.

16.2 There exists a prejudicial question.

16.3 A petition for review of the resolution of the prosecutor is pending at either the Department of Justice, or the Office of the President; provided, that the period of suspension shall not exceed sixty (60) days counted from the filing of the petition with the reviewing office.

Note: In *People v. Alicando*, [121] the Supreme Court held that a conviction in capital offenses cannot rest alone on a plea of guilt. The trial court must require the prosecution to prove the guilt of the appellant and the precise degree of his/her culpability beyond reasonable doubt.

Checklist II

Pre-Trial

Pre-trial; mandatory 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 and within thirty (30) days from the date the court acquires jurisdiction over the person of the accused, unless a shorter period is provided for in special laws or circulars of the Supreme Court, 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;
- (e) modification of the order of trial if the accused admits the charge but interposes a lawful defense; and
- (f) such matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case.[123]

Things To Do During The Pre-Trial Conference

1. Determine and consider with the parties and counsel mutually satisfactory plea-bargaining arrangements, such, as for example, the following:

1.1 for the accused to change his/her plea to a lesser or different offense in return for the dismissal of other count/s with or without credit, for the plea of guilty as a mitigating circumstance; or

1.2 for the accused to change his/her plea of not guilty to that of guilty to one or some of the counts of a multi-count indictment in return for the dismissal of other count/s with or without credit for the plea of guilty as a mitigating circumstance; or

1.3 for the accused to change his/her plea of not guilty to that of guilty to the offense charged, in return for the offended party's waiver of the whole or part of the civil liability or damages; or

1.4 for the accused to change his/her plea of not guilty to that of guilty plea to the offense charged, in return for the elimination of one, some, or all of the generic aggravating circumstances alleged in the information/complaint; or

1.5 for the accused to plea bargain on the nature, duration or the amount of the impossible penalty within the allowable range.

When There Is Plea Bargaining

1. The accused and his/her counsel shall manifest that they agree to enter into plea bargaining on any of the forms above-described. If the prosecution and offended party agree to the plea offered by the accused, the court issues an order making on record the plea bargaining arrived at and duly implemented.

2. In case of any such change of plea to one of guilty, proceed to receive evidence on the civil aspect before rendering judgment, unless the offended party waives civil action or his/her claim for civil liability or damages, reserves the right to institute the civil action separately, or has instituted the civil action before the criminal action.

3. Render and promulgate judgment of conviction, including therein, in the proper case, the civil liability or damages duly established by the evidence.

When There Is No Plea Bargaining

1. Cause the marking for identification of the parties respective exhibit/s, if any,

2. Determine and consider with the parties and counsel such stipulation of facts, admission, and/or agreement as may be feasible, such as, for example:

2.1

the identity of the accused;

2.2

the court's territorial jurisdiction relative to the offense/s charged;

2.3

the qualification of expert-witness/es;

2.4

the amount of damages;

2.5

the genuineness and due execution of documents; and/or,

2.6

the cause of death or injury in proper cases.

2. If convenient, forthwith cause to be reduced into writing and duly signed by the parties, particularly by the accused and his/her counsel, such stipulation, admission, and/or agreement as may be directly related to any essential element of the offense/s charged. Otherwise, incorporate admissions, agreements, stipulations in the pre-trial order to be issued after the pre-trial conference, and require the parties and counsel to sign the same.

3. Determine and consider with the parties and counsel the following and such other matters as will promote a fair and expeditious trial, to wit:

3.1 the number of witnesses to be presented;

3.2 the approximate number of hours that will be required by the parties for the presentation of their respective evidence; and

3.3 the specific trial dates needed to complete evidence presentation by all the parties which must be within a period of three (3) months from the first trial.

4. Fix the trial dates for the parties' presentation of their respective evidence inclusive of evidence in-chief and rebutting evidence, and cause the parties and their respective counsel to affix their signatures in the minutes to signify their availability on the scheduled dates.

5. Require the parties to submit to the branch clerk before leaving the court premises the names and addresses of witnesses that need to be summoned by subpoena, so that the necessary subpoena may be issued on time. Counsel or their representatives may be allowed to serve the subpoenas to insure service thereof and the submission of the returns on time.

6. Pre-trial agreement

All agreements or admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and counsel; otherwise, they cannot be used against the accused. The agreements covering the matters referred to in section 1 of this Rule shall be approved by the court.[124]

7. Non-appearance at pre-trial conference

If the counsel for the accused or the prosecutor does not appear at the pre-trial conference and does not offer an acceptable excuse for his/her lack of cooperation, the court may impose proper sanctions or penalties.[125]

8. Pre-trial order

After the pre-trial conference, the court shall issue an order reciting the actions taken, the facts stipulated, and evidence marked. Such order shall bind the parties, limit the trial to matters not disposed of, and control the course of the action during the trial, unless modified by the court to prevent manifest injustice.[126]

Checklist III

What To Do After Pre-Trial To Initial Trial

1. Cause subpoena to be issued: Subpoena ad testificandum may be signed by the clerk or branch clerk of court. But subpoena duces tecum must be signed by the judge (who must determine that the subject thereof is prima facie relevant).

2. If petition for bail is filed by the accused who is charged with an offense punishable by death or reclusion perpetua:

2.1 Set the petition for hearing and require the prosecutor to comment thereon, either by way of recommendation or opposition. Such notice of hearing should also be served upon all other accused, if any.

2.2 If the prosecutor opposes the petition, allow him to present his/her evidence to show that the prosecution's available evidence is strong. Hearing may be summary or otherwise. Cross-examination by the petitioner and any other accused shall be allowed. Petitioner shall also be allowed to offer and present evidence. Summary hearing is one that focuses on quantity and character of proof in anticipation of that to be presented at the regular trial, but not to be mere sham or pretense.[127]

2.3 Even if the prosecutor recommends bail or interposes no objection to the petition for bail, the court must still set the case for hearing.

2.4 Resolve the petition for bail with a narration of the evidence collectively deemed either strong or weak to justify the conclusion made.

2.5 Indispensable requirements

There must be a hearing.[128] Evidence of guilt must be strong. Prosecution must be given full opportunity to present evidence.[129]

Note: The Court may not grant bail simply for non-appearance of the prosecution but should ask the prosecution such questions as would ascertain the strength of the state in evidence and judge the adequacy of the bail.[130]

2.6. Duties of a Judge in case an application for bail for crimes punishable by reclusion perpetua or higher

In the light of the applicable rules on bail and the jurisprudential principles just enunciated, the Court laid down the duties of the trial judge in case an application for bail is filed:

2.6.1 Notify the prosecutor of the hearing of the application for bail or require him to submit his/her recommendation;[131]

2.6.2 Conduct a hearing of the application for bail regardless of whether or not the prosecution refuses to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its sound discretion;[132]

2.6.3 Decide whether the evidence of guilt of the accused is strong based on the summary of evidence of the prosecution;[133]

2.6.4 If the guilt of the accused is not strong, discharge the accused upon the approval of the bailbond.[134] Otherwise, petition should be denied.[135]

2.6.5 Issue an order containing a summary of the evidence presented by the prosecution and defense, if any. (People v. San Diego, 26 SCRA 522, Paderang v. Court of Appeals, 247 SCRA 741, Rasul v. Judge Rapatalo, 269 SCRA 220)

TEN COMMANDMENTS FOR A JUDGE ON APPLICATIONS FOR BAIL

1. Do not grant bail unless the accused is in legal custody.[136]
2. Do not act on an application for bail or set it for hearing unless you have jurisdiction over the person of the accused and of the case.[137]
3. Do not grant bail in non-bailable offenses without application and notice to the prosecutor and in bailable offenses without notice to or recommendation of prosecutor.[138]
4. Do not grant bail in non-bailable offenses without a hearing.[139] (Even if the investigating judge had granted bail or the prosecutor in filing the Information had recommended bail.)
5. Do not grant bail in non-bailable offenses without giving the prosecution full opportunity to present its evidence.[140]
6. Do not grant bail in non-bailable offenses simply because of the prosecution's non-appearance. [141]
7. Do not grant bail on appeal after the accused have been convicted of a non-bailable offense[142] or from a non-bailable offense to a bailable offense. This should be addressed to the appellate court.[143]
8. Do not grant bail when the penalty imposed by the Regional Trial Court exceeds six (6) years but not more than twenty (20) years where any of the circumstances mentioned in Section 5, Rule 114 are present.[144]
9. Do not grant bail after the judgment has become final unless the accused has applied for probation before commencing to serve sentence, the penalty and the offense being within the purview of the probation law.[145]
10. Do not grant bail after the accused had commenced to serve sentence.[146]

Checklist IV

Incidents During Trial

What To Do When There Is Application To Discharge Accused To Be State Witness

1. Applicable Rule: Section 17, Rule 119.
2. When applicable

Two or more persons jointly charged with the commission of the offense.

Whether to discharge more than one depends upon the need of the prosecutor and the discretion of the Judge.[147]

3. When to apply

Upon motion of the prosecution before resting its case.[148]

4. Things the Court should do

4.1 require prosecution to present evidence. Trial court should hold in abeyance or defer its resolution on the motion until the prosecution had presented all its evidence.[149]

4.2 require submission of sworn statement of each proposed witness at a hearing in support of the discharge and ascertain if the conditions fixed by Section 17 of Rule 119 are complied with, namely:

4.2.1 there is absolute necessity for the testimony of the defendant whose discharge is requested.[150]

The prosecutor must show that there is absolute necessity for the testimony of the defendant whose discharge he seeks, in order to be a witness for the prosecution[151] or the accused is the only one who has knowledge of the crime and not when his/her testimony would simply corroborate or otherwise strengthen the evidence in the hands of the prosecution.[152]

Example: Where the prosecution itself admitted that one of the government witnesses, named Michael Yu testified that he saw and recognized the accused, Domingo Can as one of those who committed the robbery, such testimony is direct evidence of Can's participation and clearly negates the absolute necessity of Daria's testimony in identifying Can as one of the perpetrators of the crime. If at all, Daria's testimony would be merely corroborative and not essential.[153]

4.2.2 there is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said defendant.[154]

4.2.3 the testimony of said accused can be substantially corroborated in its material points.[155]

4.2.4 said accused does not appear to be the most guilty.[156]

- Meaning of not the most guilty not the least guilty. [157]The rule does not require that he be the 'least guilty' but only that he not be the 'most guilty.' [158]

- Absolute certainty is not required. [159]In coming to his/her conclusion as to the 'necessity for the testimony of the accused whose discharge is requested'; as to the 'availability or non-availability of other direct or corroborative evidence'; as to which of the accused is the 'most guilty'; and like, the judge must rely in a large part upon the suggestions and information furnished by the state prosecutors. [160]

4.2.5 said accused has not at any time been convicted of any offense involving moral turpitude. [161]

- Concept of moral turpitude

Moral turpitude has been described as an act of baseness, vileness and depravity in the private and social duty which a man owes to us fellowmen or to society in general, [162]done out of spirit of cruelty, hostility or revenge, [163]but there is also authority to the effect that an act is not done when it is prompted by the sudden resentment of an injury calculated in no slight degree to awaken passion. [164]In the absence, therefore, of any evidence to show the gravity and the nature of the malicious mischief committed, or at least, the value of the property

destroyed and/or the circumstances under which the act of destroying was committed, we should not make haste in declaring that the crime of malicious mischief involves moral turpitude. [165]

- Examples of crimes involving moral turpitude

Estafa, [166]abduction with consent, [167]concubinage. [168]There is no moral turpitude for conviction for or playing mahjong [169]

Effects of Discharge

1. Evidence adduced in support of the discharge shall automatically form part of the trial. [170]If the court denies the motion to discharge of the accused as state witness, his/her sworn statement shall be inadmissible in evidence. [171]

2. Discharge of accused operates as an acquittal and bar to further prosecution for the same offense[172] except in the following cases:

2.1 Unless accused fails or refused to testify against his/her co-accused in accordance with his/her sworn statement constituting the basis of his/her discharge. [173]

2.2 Failure to testify refers exclusively to defendant's will or fault. [174]

2.3 Extrajudicial Confession: Admissibility; where an accused who turns State's evidence on a promise of immunity but later retracts and fails to keep his/her part of the agreement, his/her confession of his/her participation in the commission of the crime is admissible as evidence against him. [175]

3. Erroneous or improper discharge of state witness does not affect the competency and quality of the testimony of the discharged defendant. [176]

When A Motion/Petition To Suspend A Criminal Action Based Upon The Alleged Pendency Of A Prejudicial Question In A Civil Action Is Filed In The Criminal Action

1. At the hearing of the motion, ask the adverse party to comment on the motion if no such comment or opposition has not yet been filed.

2. Thereafter, determine if a prejudicial question exists. A prejudicial question is a question based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused. [177]Its essential elements are: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; (b) the resolution of such issue determines whether or not the criminal action may proceed; and (c) the cognizance of the prejudicial question pertains to another tribunal. [178]

2.1 Examples

Where a man was charged with bigamy by his second wife, a civil action filed by him against her for the annulment of their marriage on the ground that he was forced to contract said subsequent marriage is a prejudicial question to the criminal action. [179] The question of validity of said marriage cannot ordinarily be decided in the criminal action for bigamy but in the civil action for annulment. The annulment on the aforesaid ground would prove that his act of contracting that marriage was involuntary; hence, no criminal liability would attach.

In a civil action brought by plaintiff to annul the sale of land by defendant to a third party – the plaintiff alleging that the same land was previously sold by the defendant to him, but defendant raised the defense that his signature appearing on the deed of sale to plaintiff has been forged – the question of validity of the sale to plaintiff, to be determined in the civil action, is prejudicial to the criminal action for Estafa filed by plaintiff against said

defendant. [180]

2.2 Elements of prejudicial question

The elements of a prejudicial question are: (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed. [181]

The law limits a prejudicial question to a previously instituted civil action not to a subsequent one.

2.3 Note also although the present Rule does not specify who may file the motion or petition for suspension of the criminal proceedings on the ground of pendency of a prejudicial question, any party – the prosecutor, the accused, or the private prosecutor – may file the petition. [182]

2.4 Finally, note that while such petition to suspend may be filed in the office of the prosecutor or the court conducting the preliminary investigation, it may be filed before the court trying the criminal action only 'before the prosecution rests.' [183] Accordingly, the petition should be denied if it is filed after the prosecution has rested.

If a petition to suspend is filed with the Prosecutor's Office, and the same is denied, the petition to suspend may be again filed before the Court. The determination of its finality is only provisional.

What A Judge Should Do If Accused Is Reported To Have Died [184]

1. Ascertain veracity of report with submission of Death Certificate and Comment from prosecution.
2. If the accused dies before arraignment, the case shall be dismissed without prejudice to any civil action the offended party may file against the estate of the deceased. [185]
3. The death of the accused after arraignment and during the pendency of the criminal action shall extinguish the civil liability arising from the delict.
4. However, the independent civil action instituted under section 3 of this Rule or which thereafter is instituted to enforce liability arising from other sources of obligation may be continued against the estate or legal representative of the accused after proper substitution or against said estate, as the case may be. The heirs of the accused may be substituted for the deceased without requiring the appointment of an executor or administrator and the court may appoint a guardian ad litem for the minor heirs.
5. Before ordering substitution, direct counsel for the accused to inform court of the names and addresses of the decedent's heirs or whether or not his/her estate is under administration and has a duly appointed administrator.
6. The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice
7. The title of the case should be amended to show its civil aspect by including the name of the offended party as plaintiff and the legal representative or heir of the accused substituted as defendant. [186]
8. A final judgment entered in favor of the offended party shall be enforced in the manner especially provided in these rules for prosecuting claims against the estate of the deceased.

What A Judge Should Do In Case A Motion For Disqualification Or Inhibition Is Filed

A. The Rules of Disqualification and Inhibition

- Code of Judicial Conduct

Rule 3.12. – A judge should take no part in a proceeding where the judge’s impartiality might reasonably be questioned. These cases include, among others, proceedings where:

(a)

The judge has personal knowledge of disputed evidentiary facts concerning the proceeding;

(b)

The judge served as executor, administrator, guardian, trustee or lawyer in the case or matters in controversy, or a former associate of the judge served as counsel during their association, or the judge or lawyer was a material witness therein;

(c)

The judge’s ruling in a lower court is the subject of review;

(d)

The judge is related by consanguinity or affinity to a party litigant within the sixth degree or to counsel within the fourth degree;

(e)

The judge knows the judge’s spouse or child has a financial interest, as heir, legatee, creditor, fiduciary, or otherwise, in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.

In every instance the judge shall indicate the legal reason for inhibition.

Rule 3.13. – A judge disqualified by the terms of Rule 3.12 may, instead of withdrawing from the proceeding, disclose on the record the basis of disqualification. If, based on such disclosure, the parties and lawyers independently of the judge’s participation, all agree in writing that the reason for the inhibition is immaterial or insubstantial, the judge may then participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.

- Rules of Court – Rule 137

Sec. 1. Disqualification of judges. – No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of the sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

Sec. 2. Objection that judge disqualified, how made and effect. – If it be claimed that an official is disqualified from sitting as above provided, the party objecting to his competency may, in writing, file with the official his objection, stating the grounds therefor, and the official shall thereupon proceed with the trial, or withdraw therefrom in accordance with his determination of the question of his disqualification. His decision shall be forthwith made in writing and filed with the other papers in the case, but no appeal or stay shall be allowed from, or by reason of, his decision in favor of his own competence until after final judgment in the case.

B. Distinction Between Ground For Disqualification Or Inhibition

A ground for disqualification gives the judge no discretion, while ground for inhibition is addressed to the sound discretion of the judge. [187]

C. If the judge disqualifies or inhibits himself, the inhibition is a judicial matter which does not require administrative action by the Supreme Court except under the situation discussed below:

1. The judge should send the copy of his/her Order of Inhibition or Disqualification to the Executive Judge for re-affle of the case. [188]
2. There should be no exchange of cases between the recusing judge and the judge to whom the case is re-affled. However, appropriate adjustments must be made in the raffle of cases so that the judge to whom the case is re-affled should be credited with one new case. And the recusing judge should be assigned one additional case to offset the case that he re-affled.

D. Submission for approval or notation to the Supreme Court of order of inhibition is required where:

1. The judge is in a single sala seat and another judge from another seat has to be designated.
2. The judge is in a multiple sala seat and there is a conflict of opinion between the recusing judge and the judge designated on the propriety of inhibition or disqualification. [189]

If the situation is not as described above, then the judge should merely send his/her order to the Executive Judge for re-affle in a multiple sala court.

E. Significant Rulings

1. Test in inhibition is whether the parties can be assured that the case can be heard with the cold neutrality of an impartial judge. [190]
2. Judge must either recuse himself or proceed with the case; he cannot do both by first disposing of the case and then inhibiting himself. [191] In single sala courts, judges should exercise prudence and discretion to avoid unnecessary problems and waste of time resulting in the transfer of the case to another sala. [192]
3. The mere filing of an administrative case against respondent judge is not a ground for disqualifying him from hearing the case, for if on every occasion the party apparently aggrieved would be allowed to either stop the proceedings in order to await the final decision on the desired disqualification, or demand the immediate inhibition of the judge on the basis of his/her being so charged, many cases would have to be kept pending or perhaps there would not be enough judges to handle all the cases pending in all the courts. [193]
4. A judge cannot sit any case in which he was a counsel without the written consent of all the parties in interest, signed by them and entered upon the record. He cannot proceed just because there was no objection from any of the parties. The rule is explicit that he must secure the written consent of all the parties, not a mere verbal consent much less a tacit acquiescence. [194]
5. The fact that the judge issued a writ of preliminary prohibitory injunction on the question of whether the

carousel was an attractive nuisance, does not disqualify the judge from hearing the case on the merits because this is not yet a final determination. An adverse provisional ruling does not disqualify a judge. [195]

V. CONDUCTING THE TRIAL

1. Supreme Court Circulars

Circular 3-99

A. Trial

1. Unless the docket of the court requires otherwise, not more than four (4) cases shall be scheduled for trial daily.
2. The Presiding Judge shall make arrangements with the prosecutor and the Public Attorney's Office (PAO) so that a relief prosecutor and a PAO attorney are always available in case the regular prosecutor or PAO attorneys are absent.
3. Contingency measures must likewise be taken for any unexpected absence of the stenographer and other support staff assisting in the trial.
4. The issuance and service of subpoenae shall be done in accordance with Administrative Circular No. 4 dated 22 September 1988.
5. The judge shall conduct trial with utmost dispatch, with judicious exercise of the court's power to control trial proceedings to avoid delay.
6. The judge must take notes of the material and relevant testimonies of witnesses to facilitate his decision-making.
7. The trial shall be terminated within ninety (90) days from initial hearing. Appropriate disciplinary sanctions may be imposed on the judge and the lawyers for failure to comply with the requirement due to causes attributable to them.
8. Each party is bound to complete the presentation of his evidence within the trial dates assigned to him. After the lapse of said dates, the party is deemed to have completed the presentation of evidence. However, upon verified motion based on compelling reasons, the judge may allow a party additional trial dates in the afternoon; provided that said extension will not go beyond the three-month limit computed from the first trial date except when authorized in writing by the Court Administrator, Supreme Court.

All trial judges must strictly comply with Circular No. 38-98, entitled 'Implementing the Provisions of Republic Act No. 8493 (An Act to Ensure a Speedy Trial of All Cases Before the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, and Municipal Circuit Trial Court, Appropriating Funds Therefor, and for Other Purposes)' issued by the Honorable Chief Justice Andres R. Narvasa on September 15, 1998.

B. Compliance With Periods

1. As a constant reminder of what cases must be decided or resolved, the judge must keep a calendar of cases submitted for decision, noting therein the exact day, month and year when the 90-day period is to expire. As soon as a case is submitted for decision, it must be noted in the calendar of the judge; moreover, the records shall be duly collated with the exhibits and transcripts of stenographic notes, as well as the trial notes of the judge, and placed in the judge's chamber.
2. In criminal cases, the judge will do well to announce in open court at the termination of the trial the date of the

promulgation of the decision, which should be set within 90 days from the submission of the case for decision.

3. All Judges must scrupulously observe the period prescribed in Section 15, Article VIII of the Constitution.

C. Pertinent Rules

1. Time to prepare for trial

After a plea of not guilty is entered, the accused shall have at least fifteen (15) days to prepare for trial. The trial shall commence within thirty (30) days from receipt of the pre-trial order. [196]

2. Continuous trial until terminated; postponements

Trial once commenced shall continue from day to day as far as practicable until terminated. It may be postponed for a reasonable period of time for good cause.

The court shall, after consultation with the prosecutor and defense counsel, 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 Supreme Court. [197]

The time limitations provided under this section and the preceding section shall not apply where special laws or circulars of the Supreme Court provide for a shorter period of trial.

3. Exclusions

The following periods of delay shall be excluded in computing the time within which trial must commence:

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 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.

3.2 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. He shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence.

3.3 Any period of delay resulting from the mental incompetence or physical inability of the accused to stand trial.

3.4 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.

3.5 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.

3.6 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 the 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. [198]

4. 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 of SC Circular 38-98.

4.1 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

4.2 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 therein.

In addition, no continuance under section 3(f) of this Rule 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 prosecutor. [199]

5. Time limit following an order for new trial

If the accused is to be tried again pursuant to an order for a new trial, the trial shall commence within thirty (30) days from notice of the order, provided that if the period becomes impractical due to unavailability of witnesses and other factors, the court may extend it but not to exceed one hundred eighty (180) days from notice of said order for a new trial. [200]

6. Extended time limit

Notwithstanding the provisions of section 1(g), Rule 116 and Section 1, SC Circular No. 38-98 for the first twelve-calendar-month period following its effectivity on September 15, 1998, 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. [201]

7. 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, it shall be his duty to do the following:

7.1 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.

7.2 Upon receipt of that notice, the custodian 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.

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

7.4 When the custodian of the prisoner receives from the public attorney a properly supported request for the availability of the prisoner for purposes of trial, the prisoner shall be made available accordingly. [202]

8. Sanctions

In any case in which private counsel for the accused, the public attorney, or the prosecutor:

8.1 Knowingly allows the case to be set for trial without disclosing that a necessary witness would be unavailable for trial;

8.2 Files a motion solely for delay which he knows is totally frivolous and without merit;

8.3 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

8.4 Willfully fails to proceed to trial without justification consistent with the provisions hereof, the court may punish such counsel, attorney, or prosecutor, as follows:

1)

By imposing on a counsel privately retained in connection with the defense of an accused, a fine not exceeding Php 20,000;

2)

By imposing on any appointed counsel de oficio, public attorney, or prosecutor a fine not exceeding Php 5,000; and

3)

By denying any defense counsel or prosecutor the right to practice before the court trying the case for a period not exceeding thirty (30) days. The punishment provided for by this section shall be without prejudice to any appropriate criminal action or other sanction authorized under these rules. [203]

9. 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 Section 1(g), Rule 116 and Section 1, as extended by Section 6 of this rule, 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 the motion but the prosecution shall have the burden of going forward with the evidence to establish the exclusion of time under section 3 of this rule. 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. [204]

10. Law on speedy trial not a bar to provision on speedy trial in the Constitution

No provision of law on speedy trial and no rule implementing the same shall be interpreted as a bar to any charge of denial of the right to speedy trial guaranteed by section 14(2), article III, of the 1987 Constitution. [205]

11. Order of trial

The trial shall proceed in the following order:

1)

The prosecution shall present evidence to prove the charge and, in the proper case, the civil liability.

2)

The accused may present evidence to prove his defense and damages, if any, arising from the issuance of a provisional remedy in the case.

3)

The prosecution and the defense may, in that order, present rebuttal and sur-rebuttal evidence unless the court, in furtherance of justice, permits them to present additional evidence bearing upon the main issue.

4)

Upon admission of the evidence of the parties, the case shall be deemed submitted for decision unless the court directs them to argue orally or to submit written memoranda.

5)

When the accused admits the act or omission charged in the complaint or information but interposes a lawful defense, the order of trial may be modified.

D. How To Deal With Accused's Motion For Examination Of His/Her Witness Before Trial

1. Check sufficiency of the motion, particularly as regards notice and service thereof, and the contents of the

motion, keeping in mind that the governing rule[206] requires the following:

1.1 that there be notice to all other parties:

1.2 that the motion shall state: (1) the name and residence of the witness; (2) the substance of his/her testimony; and (3) that the witness is so sick or infirm as to afford reasonable ground for believing that he will not be able to attend the trial, or resides more than 100 kilometers from the place of trial and has no means to attend the same, or that, apart from the foregoing, other similar circumstances exist that would make him unavailable or prevent him from attending the trial; and

1.3 that the motion shall be supported by affidavit of the accused and such other evidence as the court may require.

2. If the motion does not comply with the notice requirement, issue an order requiring compliance by movant with the notice requirement with the warning that the motion shall be disallowed if not complied with.

3. If the motion complied with the notice requirement, hear the motion at the time set therefor.

4. If the motion is found to be unmeritorious, issue an order denying it, with a concise statement of the reason(s) for the denial.

5. If satisfied that the examination of the witness is necessary, issue an order directing and providing, conformably with the governing rule[207] as follows:

5.1 that the witness be examined at a specified time and place before the judge ordering the examination (or before any other judge or if not practicable, any member of the Bar in good standing so designated by the judge in the order, or, if the order be granted by a court of superior jurisdiction, before an inferior court designated in the order);

5.2 that a copy of the order be served on the prosecutor within a given time prior to that fixed for the examination;

5.3 that the examination shall proceed notwithstanding the prosecutor's absence, if it appears that he was duly notified of the hearing; and

5.4 that a written record of the testimony shall be taken.

E. How To Deal With Prosecution's Motion For Examination Of Its Witness Before Trial

1. Check sufficiency of the motion, particularly as regards notice and service thereof, and the contents of the motion, keeping in mind that the governing rule[208] requires (a) that there be notice to the accused and (b) that there be a showing that the witness is too sick or infirm to appear at the trial or has to leave the Philippines with no definite date of returning thereto.

1.1 If the motion does not comply with the notice requirement, issue an ordering requiring compliance by movant with the notice requirement, with warning that the motion shall be disallowed if not complied with.

1.2 If the motion complied with the notice requirement, hear the motion at the time set therefor.

2. If the motion is found to be unmeritorious, issue an order denying it, with a concise statement of the reason(s) for the denial.

3. If the motion is found to be meritorious, issue an order directing and providing, conformably with the said governing rule, as follows:

3.1 that the witness be examined before the court at a specified time, such examination to be conducted in the

same manner as an examination at the trial;

3.2 that a copy of the order be served on the accused within a given time prior to that fixed for the examination;

3.3 that the accused shall attend the said examination and his/her failure or refusal to do so despite due notice shall be deemed a waiver; and

3.4 that the statement thus taken may be admitted in behalf of or against the accused.

4. At the same time set therefor, hold the hearing for the examination of the witness, the same to be conducted in the same manner as an examination at the trial, in the presence of the accused or notwithstanding his/her absence, if it appears that he was duly notified of the hearing.

F. If A Motion For Confinement Of An Accused In A Mental Hospital Is Filed

1. Set the motion for hearing on the date suggested by the movant or fixed by the court, with notice to the parties, their counsel, the prosecutor and the person having charge of the accused or his/her relatives.

2. If the accused appears to be suffering from an unsound mental condition which effectively renders him unable to fully comprehend or stand trial:

2.1 Suspend the proceeding and order his/her mental examination and/or confinement in the National Centre for Mental Health or any mental institution in the locality recognized by the government, with a directive to the Director of the hospital or mental institution to submit a quarterly report on the accused's mental condition.

2.2 On the basis of the report that the accused has fully recovered and can stand trial, order his/her immediate discharge and set the case for the continuation of the proceedings. [209]

G. Demurrer to Evidence

1. A demurrer to evidence is a motion to dismiss the case on the ground of insufficiency of evidence after the prosecution has rested its case

2. After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court. [210]

3. The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.

Checklist

Steps To Take When Demurrer To Evidence Is Filed

1. Determine whether the filing of the demurrer to evidence is made after the prosecution has rested its case, otherwise, deny the motion for being prematurely filed. [211]

2. If the demurrer to evidence is properly filed after the prosecution has rested its case, give the prosecution an opportunity to be heard whether in oral argument or in writing.

3. If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.

4. Court's discretion in the grant or denial of demurrer to evidence

Judicial action on a demurrer to evidence or motion to dismiss is left to the exercise of sound judicial discretion. In the absence of a clear showing of grave abuse thereof, amounting to lack of jurisdiction, the trial court's denial of the motion may not be disturbed and may only be reviewed in the ordinary courts of law by an appeal from the judgment after trial. Certiorari does not lie to challenge the trial court's interlocutory order denying the accused's motion to dismiss. Certiorari is not the proper remedy, for the error, if any, of the trial court, is an error of judgment and not of jurisdiction. The appellate court will not review in such special civil action the prosecution's evidence and decide in advance that such evidence has or has not yet established the guilt of the accused beyond reasonable doubt.

5. When demurrer to evidence is denied

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his/her defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

6. The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by certiorari before judgment.

7. When demurrer to evidence is granted

The dismissal is one on the merits which is equivalent to an acquittal; hence, the prosecution cannot appeal as it would place the accused in double jeopardy. [212]

8. Reopening

At any time before finality of the judgment of conviction, the judge may, *motu proprio* or upon motion, with hearing in either case, reopen the proceedings to avoid a miscarriage of justice. The proceedings shall be terminated within thirty (30) days from the order granting it. [213]

VI. JUDGMENT

A. Definition

Judgment means that adjudication by the court that the accused is guilty or is not guilty of the offense charged, and the imposition of the proper penalty and civil liability provided for by law on the accused. [214]

Checklist

Steps To Take In Rendering Judgment

Rules of Court, Rule 120, Sec. 2

1. Prepare the judgment personally and directly in the official language and sign the same. [215] This holds true with orders of dismissal;

2. See to it that the judgment contains a clear and distinct statement of facts proved or admitted by the accused and the law upon which the judgment is based: [216]

3. If it is of conviction, state:

3.1 the legal qualification of the offense constituted by the acts committed by the accused, and the aggravating or mitigating circumstances attending the commission thereof, if there are any;

3.2 the participation of the accused in the commission of the offense, whether as principal, accomplice, or accessory after the fact;

3.3 the penalty imposed upon the accused; [217]

3.4 the civil liability or damages caused by the wrongful act to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate action has been reserved or waived.

4. In case the judgment is of acquittal, it shall state whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his/her guilt beyond reasonable doubt. In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist.

5. When two or more offenses are charged in a single complaint or information, and the accused fails to object to it before trial, convict the accused of as many offenses as are charged and proved, and impose on him the penalty for each and every one of them setting out separately the findings of fact and law in each offense. [218]

6. When there is a variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved. [219]

An offense charged necessarily includes that which is proved, when some of the essential elements or ingredients of the former, as this is alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter. [220]

B. Extent of Damages Awarded in Civil Liability Arising from Crimes

Civil liability arising from crime includes, moral damages, exemplary damages and loss of earning capacity. [221]Attorney's fees may be awarded but only when a separate civil action to recover civil liability has been filed or when exemplary damages are awarded. [222]Life expectancy must be included in award of damages. [223]

The court should, however, specify how much is the indemnity for death and how much is for moral damages and not lump the whole amount. [224]Civil indemnity is separate from moral damages. [225]

In rape cases a civil indemnity of Php 50,000 is mandatory. [226]In addition, moral damages in rape is automatic without the need of pleading or any proof. [227]

Civil indemnity or actual and compensatory damages if committed or effectively qualified by any of the circumstances under which the death penalty is authorized by law, the indemnity for the victim shall be increased to the amount of Php 75,000. [228]

Actual damages should be supported by receipts. [229]

To justify a grant of actual or compensatory damages, it is necessary to prove with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable by the injured party, the actual amount of loss. [230]

Where there are no aggravating circumstances, exemplary damages should not be awarded. So also actual damages if not supported by evidence may not be awarded. [231]

Acquittal does not necessarily preclude civil liability, as in the following cases:

(a)

Where the acquittal is based on reasonable doubt[232] as only preponderance of evidence is required in civil cases;

(b)

Where there is a finding that the accused's liability is not criminal but only civil in nature; [233]and

(c)

Where there is a finding that the civil liability does not arise from or is not based upon the criminal act of which the accused was acquitted[234] as where the accused was acquitted of malversation but was held liable for the funds which were spent for unauthorized purposes.

C. Promulgation Of Judgment

1. What to do (Rule 120, Section 6, Rules of Court).

1.1 Direct the clerk of court/branch clerk of court to give notice to the accused personally or through his/her bondsman if bonded, or through the warden if detained, or through the custodian if out on recognizance.

1.2 To promulgate the judgment, direct the clerk of court/branch clerk of court to read the same in the presence of the accused and counsel de-parte or de officio.

1.3 If the conviction is for a light offense, the judgment may be read in the presence of the accused's counsel or representative.

1.4 When the judge is absent or outside of the province or city, direct the clerk of court/branch clerk of court to promulgate the judgment.

1.5 If the accused is confined or detained in another province or city, request the executive judge of the Regional Trial Court having jurisdiction over the place of confinement or detention to promulgate the judgment. The court promulgating the judgment shall have authority to accept the notice of appeal and to approve the bail bond pending appeal provided, that if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed and resolved by the appellate court.

1.6 The proper clerk of court shall give notice to the accused personally or through his/her bondsman or warden and counsel, requiring him/her to be present at the promulgation of the decision. If the accused was tried in absentia because s/he jumped bail or escaped from prison, the notice to him/her shall be served at his/her last known address.

1.7 In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation shall be made by recording the judgment in the criminal docket and serving him/her a copy thereof at his/her last known address or thru his/her counsel.

1.8 If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these rules against the judgment and the court shall order his/her arrest. Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. S/he shall state the reasons for his/her absence at the scheduled promulgation and if s/he proves that his/her absence was for a justifiable cause, s/he shall be allowed to avail of said remedies within fifteen (15) days from notice.

D. Modification of Judgment[235]

1. Modify or set aside a judgment of conviction only

1.1

Upon motion of the accused and

1.2

Before the judgment has become final or appeal has been perfected. Except when the death penalty is imposed, a judgment for conviction becomes final (a) after the lapse of the period for perfecting an appeal or (b) when the sentence has been partially or totally satisfied or (c) the accused has expressly waived in writing his/her right to appeal or (d) the accused has applied for probation. [236]

E. Entry of Judgment [237]

1. After the judgment has become final, have it entered in the book of entries of judgments. [238]

2. If no appeal or motion for new trial is filed within the time provided in the rules, direct the clerk of court/branch clerk of court to enter the judgment and prepare a certificate that such judgment has become final and executory.

VII. MOTION FOR NEW TRIAL OR RECONSIDERATION

1. Grounds For New Trial[239]

1. That errors of law or irregularities have been committed during the trial prejudicial to the substantial rights of the accused;

2. That new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment;

3. Meritorious circumstances as determined by the court on a case-to-case basis, such as:

3.1

retraction of a witness[240]

3.2

negligence or incompetency of counsel[241]

3.3

improvident plea of guilty;

3.4

disqualification of an attorney de officio to represent the accused in trial court[242]

B. Ground For Reconsideration[243]

1. Errors of law or fact in the judgment.

C. Form Of Motion For A New Trial Or Reconsideration[244]

1. The motion shall be in writing and filed with the court. [245]

2. It shall state the grounds on which it is based.

3. If based on newly discovered evidence, it must be supported by affidavits of witnesses by whom such evidence is expected to be given or by duly authenticated copies of documents which it is proposed to introduce in evidence.

D. Steps to take

1. Ascertain whether motion is seasonably filed with notice to the prosecutor and in due form;

2. Where a motion for the decision of any question of fact: hear evidence of such motion by affidavits or otherwise; [246]

3. When a new trial on the ground of errors of law or irregularities committed during the trial is granted, see to it that all the proceedings and evidence not affected by the commission of such errors and irregularities remain: set aside those affected thereby. In the interest of justice, allow the introduction of additional evidence;

4. When a new trial is granted on the ground of newly discovered evidence, let the evidence already taken stand; take and consider together with the evidence already in the record the newly discovered and such other evidence allowed to be introduced, in the interest of justice;

5. In all cases, when a new trial or reconsideration is granted, set aside the original judgment and render a new judgment accordingly. [247]

Checklist I

Steps From Filing Of Application To Referral Thereof To Probation Officer

1. Determine whether or not the probation application may be given due course, keeping in mind that the governing law, Pres. Decree No. 968, as amended, [248]requires the following:

1.1 that an application for probation be filed with the trial court; [249]

1.2 that the application be filed within the period for perfecting an appeal, that is, within fifteen (15) days from the promulgation or notice of the judgment appealed from; otherwise, the application shall not be entertained or granted; [250]

1.3 that the applicant is not a disqualified offender. A disqualified offender is: (1) sentenced to serve a maximum term of imprisonment of not more than six (6) years; (2) convicted of any crime against the national security or the public order; (3) previously convicted by final judgment of an offense punished by imprisonment of not less than one (1) month and one (1) day and/or fine of not less than Php200; (4) once on probation under the

provisions of this Decree; and (5) already serving sentence at the time the substantive provisions of this Decree became applicable pursuant to Section 33 hereof. [251]

2. If the application does not appear to be meritorious, issue Order denying due course to the application. Refer to the copy of Probation Court form for use as a guide in drafting the Order.

3. If the application appears meritorious, issue Order giving due course to the application. Refer to the copy of Probation Court form for use as a guide in drafting the Order.

4. In the absence of any showing that the applicant may not be placed on probation under existing laws, issue Order for post-sentence investigation to be conducted by the probation officer of the territory where the court sits. Refer to the copy of Probation Court form, for use as a guide in drafting the Order.

Sample Probation Court Forms

REPUBLIC OF THE PHILIPPINES

REGIONAL TRIAL COURT OF _____

Branch _____

_____ Judicial District

Criminal Case No. _____

For: _____

(Crime)

X-----X

ORDER

It appearing from the records that the accused, (name) , is disqualified for probation for the reason that (state reason, e.g. sentenced to suffer imprisonment of more than six (6) years, his/her 'Application for Probation' filed with this Court on _____ is hereby denied due course.

The Branch Clerk of Court is hereby instructed to issue corresponding notices to bondsman/custodian to produce the accused or to the accused himself for the execution of sentence.

(If the accused is detained, direct Branch Clerk of Court to issue corresponding commitment order).

SO ORDERED

Judge _____

Or other appropriate court

REPUBLIC OF THE PHILIPPINES**REGIONAL TRIAL COURT OF _____**

Branch _____

_____Judicial District

Criminal Case No. _____

For: _____

(Crime)

X-----X

ORDER

It appearing from the 'Application for Probation' dated _____ filed with this Court on _____ that the applicant (name) , may be placed on probation under existing laws, the application is hereby given due course.

Let a copy of this Order be served upon the (Prosecuting Officer) who may take appropriate action or submit his/her comments on the application within ten (10) days from receipt thereof.

Pending consideration of his/her application, the accused, (name) shall remain under confinement at the _____/or is allowed temporary liberty under his/her bail bond/or is released to the custody (Name) on the latter's recognizance.

SO ORDERED

(Place)

(Date)

Judge _____

Or other appropriate court

REPUBLIC OF THE PHILIPPINES

REGIONAL TRIAL COURT OF _____

Branch _____

_____ Judicial District

Criminal Case No. _____

For: _____

(Crime)

X-----X

ORDER

The Probation Officer of _____(Province/City)_____ is hereby directed to conduct an investigation on the application for probation of the accused (name) and to submit his/her report thereon within 60 days from receipt hereof in accordance with Section 5 and 7 P.D. 968, as amended.

The Clerk of Court is hereby ordered to furnish said Probation Officer with a copy of the decision, as well as the necessary data pertinent to the case.

The accused, (name) is hereby ordered to report to the aforesaid Probation Officer within seventy-two (72) hours from receipt of this Order.

SO ORDERED

(Place)

(Date)

Judge _____

Checklist II

Steps From Receipt Of Post-Sentence Investigation Report To Issuance Of Probation Order

1. Examine and consider the probation officer's post-sentence investigation report upon receipt thereof, [252]keeping in mind the criteria for placing an offender on probation established in Sec. 8 of the Probation Law, to wit: that in determining whether an offender may be placed on probation, the court shall consider all information relative to the character, antecedents, environment; mental and physical condition of the offender, and available institutional and community resources; and, that probation shall be denied if the court finds that: (a) the offender is in need of correctional treatment that can be provided most effectively by his/her commitment to an institution; or (b) there is an undue risk that during the period of probation, the offender will commit another crime; or (c) probation will depreciate the seriousness of the offense committed.

2. Determine after such examination and consideration of said report whether to deny or grant the application for probation, keeping in mind that the court must resolve the said application not later than fifteen (15) days after receipt of the post-sentence investigation report from the probation officer. [253]

2.1 If you resolve to deny the probation application, issue Order denying the application, setting forth a concise statement of the reason/s for the denial.

2.2 If you resolve to grant the probation application, issue Order (referred to in the Probation Law as the 'probation order') [254] granting the application (see attached copy of such order for use as a guide in drafting the probation order), keeping in mind the following particulars required by the governing law, to wit: (a) that the probation order shall contain the following mandatory conditions, namely: (1) that the probationer shall present himself to the probation officer designated to undertake his/her supervision at such place as may be specified in the order within 72 hours from receipt of said order; and (2) that the probationer shall report to the probation officer at least once a month at such time and place as specified by said officer; (b) that the probation order shall state the period of probation; [255]and (c) that the court may impose other conditions provided the same are related to the rehabilitation of the probationer and not unduly restrictive of his/her liberty or incompatible with his/her freedom of conscience. [256]

3. Issue probation order to the accused, at the same time informing him of the consequences of said Order (such as, that the Order does not set aside or otherwise do away with the judgment of conviction and that it merely suspends the execution of the sentence to give way to the probation) and explaining that upon his/her failure to comply with any of the conditions prescribed in the Order or his/her commission of another offense, he shall serve the penalty imposed in the said judgment. [257]

Checklist III

How To Deal With Incidents During Probation

I. Modification of Probation Condition/s or Period

1. On receipt of the application for modification of the condition/s and/or period of probation, direct the clerk of court to set the application for hearing, with due notice to the probationer and the probation officer, keeping in mind that the governing law[258] provides that during the probation period, the court may, upon application of either the probationer or the probation officer, revise or modify the conditions or period of probation and that both probationer and probation officer must be given an opportunity to be heard thereon.

2. Hear the probationer and the probation officer on the application on the date and hour set for hearing thereof.

3. If you find the application to be unmeritorious, issue Order denying it, with due notice to the probationer and

the probation officer.

4. If you find the application to be meritorious, issue Order granting it[259] with due notice to the probationer and the probation officer.

II. Revocation of Probation

1. On your own initiative or upon receipt of proper application, issue Order setting forth the violation of the probation conditions charged against the probationer and directing the issuance of a warrant for his/her arrest since the governing law[260] provides pertinently that at any time during probation, the court may issue a warrant for the arrest of the probationer for any serious violation of the probation conditions; that once arrested, the probationer shall immediately be brought before the Court for a hearing of the violation charged; that the defendant may be admitted to bail pending such hearing; and, that the provisions regarding release on bail of persons charged with a crime shall be applicable to the probationer in such case.

2. Upon receipt of the return on the probationer's arrest and detention pursuant to said warrant, direct the clerk of court to set the charge against the probationer for hearing, with due notice to the probationer and the probation officer.

3. Conduct the hearing as scheduled, keeping in mind that the governing law[261] provides pertinently that the hearing shall be summary in nature; that the court shall not be bound by the technical rules of evidence but may inform itself of all the facts which are material and relevant to ascertain the veracity of the charge; that the probationer shall have the right to be informed of the violation charged and to adduce evidence in his/her favor; and, that the State shall be represented by a prosecuting officer in any contested hearing.

4. If the violation is established, issue Order either revoking the probation or continuing the probation and modifying the conditions thereof, keeping in mind that the governing law[262] provides pertinently that if the grant of probation is revoked, the court shall order the probationer to serve the sentence originally imposed and that an Order revoking the grant of probation or modifying the terms and conditions thereof shall not be appealable. [263]

5. If the grant of probation is revoked, issue Order of commitment on final sentence.

6. If the violation is not established, issue Order dismissing the charge and continuing the probation under the same terms and conditions of the Probation Order, with corresponding directive for the probationer's immediate release from custody or the cancellation of his/her bail bond, as the case may be.

III. Transfer of Control over Probationer

1. On receipt of application therefor, examine and determine if the same is meritorious or not.

2. If meritorious, issue Order granting the application, keeping in mind that the governing law[264] provides pertinently that whenever a probationer is permitted to reside in a place under the jurisdiction of another court, control over him shall be transferred to the Executive Judge of the Regional Trial Court (formerly, the Court of First Instance) of that place[265] and in such a case, a copy of the Probation Order, the post-sentence investigation report, and other pertinent records shall be furnished the said Executive Judge, and thereafter, the said Executive Judge shall have the power with respect to the probationer that was previously possessed by the court which granted the probation to the defendant.

IV. Termination of Probation

1. After the period of probation and upon consideration of the corresponding report and recommendation of the

probation officer, issue Order directing the final discharge of the probationer if you find that he has fulfilled the terms and conditions of his/her probation, keeping in mind that the governing law[266] provides pertinently that upon the issuance of such Order the case is deemed terminated; that the final discharge of the probationer shall operate to restore to him all civil rights lost or suspended as a result of his/her conviction and to fully discharge his/her liability for any fine imposed as to the offense for which probation was granted and that the probationer and the probation officer shall each be furnished a copy of such Order. [267]

REPUBLIC OF THE PHILIPPINES

REGIONAL TRIAL COURT OF _____

Branch _____

_____ Judicial District

Criminal Case No. _____

For: _____

(Crime)

X-----X

ORDER

Upon the recommendation dated _____ of the Probation Officer assigned to this case and finding the same to be well taken, the same is approved and the probation granted to the accused, (name) , is hereby revoked.

The execution of the sentence originally imposed upon the said accused is hereby set for (Date) at (Place) .

Let copies of this Order be furnished the probationer and the probation officer.

SO ORDERED

(Place)

(Date)

Judge _____

Or other appropriate court

Probation Court Form No. _____

(Order Modifying the Conditions of Probation)

REPUBLIC OF THE PHILIPPINES

REGIONAL TRIAL COURT OF _____

Branch _____

_____ Judicial District

Criminal Case No. _____

For: _____

(Crime)

X-----X

ORDER

Upon the recommendation dated _____ of the Probation Officer assigned to this case and finding the same to be well taken, the probation is hereby modified as follows:

Let copies of this Order be furnished the probation and the probation officer.

SO ORDERED

(Place)

(Date)

Judge _____

Or other appropriate court

Probation Court Form No. ____

(Order of Final Discharge of Probationer)

REPUBLIC OF THE PHILIPPINES**REGIONAL TRIAL COURT OF _____**

Branch _____

_____ Judicial District

Criminal Case No. _____

For: _____

(Crime)

X-----X

ORDER

Upon the recommendation dated _____ of the Probation Officer assigned to this case and finding the same to be well taken, the probation is hereby modified as follows:

Let copies of this Order be furnished the probation and the probation officer.

SO ORDERED

(Place)

(Date)

Judge _____

Or other appropriate court

VIII. ISSUANCE OF SEARCH WARRANTS

Rules of Court

Rule 126

Sec. 2. Court where application for search warrant shall be filed. – An application for search warrant shall be filed with the following:

(a) Any court within whose territorial jurisdiction a crime was committed.

(b) For compelling reasons stated in the application, any court within the judicial region where the crime was committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced.

However, if the criminal action has already been filed, the application shall only be made in the court where the criminal action is pending.

A. Rule on Forum Shopping

A search warrant was quashed because the applicant had been guilty of forum shopping as the applicant sought the search warrant from a Manila Regional Trial Court after was denied by the courts of Pampanga. [[268]]

The Rules of Court, however, requires only initiatory pleading to be accompanied with a certificate of non-forum shopping omitting any mention of 'applications' as in Supreme Court Circular No. 04-94. Hence, the absence of such certification will not result in the dismissal of the application for search warrant. [269]

Rules of Court Rule 126

Sec. 3. Personal property to be seized.— A search warrant may be issued for the search and seizure of personal property:

- (a) Subject of the offense;
- (b) Stolen or embezzled and other proceeds, or fruits of the offense; or
- (c) Used or intended to be used as the means of committing an offense.

Sec. 4. Requisites for issuing search warrant.— A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.

Sec. 5. Examination of complainant; record.— The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted.

B. Meaning of Probable Cause

Probable cause for a search is defined as such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched. [270]

C. Basis of Probable Cause; Personal Knowledge

This probable cause must be shown to be within the personal knowledge of the complainant or the witnesses he may produce and not based on mere hearsay, [271] in order to convince the judge, not the individual making the affidavit and seeking the issuance of the warrant of the existence of a probable cause. [272]

1. Meaning of knowledge; test is liability for perjury

The following test was laid in determining whether the allegations in an application for search warrant or in supporting deposition, are based on personal knowledge or not —

The true test of sufficiency of a deposition or affidavit to warrant issuance of a search warrant is whether it has been drawn in a manner that perjury could be charged thereon and the affiant be held liable for damage caused.

The oath required must refer to the truth of the facts within the personal knowledge of the applicant for search warrant, and/or his/her witnesses, not of the facts merely reported by a person whom one considers to be reliable. [273]

2. Insufficiency of Affidavits

Mere affidavits of the complainant and his/her witnesses are not sufficient. The examining Judge has to take depositions in writing of the complainant and the witnesses he may produce and to attach them to the record. Such written deposition is necessary in order that the Judge may be able to properly determine the existence or non-existence of the probable cause, to hold liable for perjury the person giving it if it will be found later that his/her declarations are false. [274]

Search warrants are not issued on loose, vague or doubtful basis of fact, nor on mere suspicion or belief. The facts recited in an affidavit supporting the application for a search warrant must be stated with sufficient definiteness, so that, if they are false, perjury may be assigned on the affiant. Hence, affidavits which go no further than to allege conclusions of law, or of fact, are insufficient. [275]

Equally insufficient as a basis for the determination of probable cause is a statement contained in a joint affidavit 'that the evidence gathered and collated by our unit clearly shows that the premises above-mentioned and the articles and things above-prescribed were used and are continuously being used for subversive activities in conspiracy with and to promote the objective of, illegal organizations such as the Light-A-Fire Movement, Movement for Free Philippines, and April 6 Movement.'

3. Prudente v. The Hon. Executive Judge A.M. Dayrit

In his/her application for search warrant, P/Major Alladin Dimagmaliw stated that 'he has been informed' that Nemesio Prudente 'has in his control and possession' the firearms and explosives described therein, and that he 'has verified the report and found it to be a fact.' On the other hand, in his supporting deposition, P/Lt. Florencio C. Angeles declared that, as a result of their continuous surveillance for several days, they gathered informations from verified sources that the holders of the said firearms and explosives are not licensed to possess them. In other words, the applicant and his witness had no personal knowledge of the facts and circumstances which became the basis for issuing the questioned search warrant, but acquired knowledge thereof only through information from other sources or persons.

While it is true that in his application for search warrant, applicant P/Major Dimagmaliw stated that he verified the information he had earlier received that petitioner had in his possession and custody the firearms and explosives described in the application, and that he found it to be a fact, yet there is nothing in the record to show or indicate how and when said applicant verified the earlier information acquired by him as to justify his conclusion that he found such information to be a fact. He might have clarified this point if there had been searching questions and answers, but there were none. In fact, the records yield no questions and answers, whether searching or not, vis-à-vis the said applicant.

What the records show is the deposition of witness, P/Lt. Angeles, as the only support to P/Major Dimagmaliw's application, and the said deposition is based on hearsay. For it avers that they (presumably, the police authorities) had conducted continuous surveillance for several days of the suspected premises and, as a result thereof, they 'gathered information from verified sources' that the holders of the subject firearms and explosives are not licensed to possess them.

Evidently, the allegations contained in the application of P/Major Alladin Dimagmaliw and the declaration of P/Lt Florencio C. Angeles in his deposition were insufficient basis for the issuance of a valid search warrant. As held

in the Prudente case:

The oath required must refer to the truth of the facts within the personal knowledge of the petitioner or his witnesses, because the purpose thereof is to convince the committing magistrate, not the individual making the affidavit and seeking the issuance of the warrant, of the existence of probable cause. [276]

4. Factors that may be considered in determination of probable cause: time of application in relation to alleged offense considered in determination of probable cause

The Supreme Court observed:

It has likewise been observed that the offenses alleged took place from 1961 to 1964, and the application for search warrant was made on October 27, 1965. The time of the application is so far remote in time as to make the probable cause of doubtful veracity and the warrant vitally defective. Thus, Mr. Joseph Varon, an eminent authority on Searches, Seizures and Immunities, has this to say on this point: subject, the following general rules are said to apply to affidavits for search warrants:

(1)

x x x

(2)

Such statement as to the time of the alleged offense must be clear and definite and must not be too remote from the time of the making of the affidavit and issuance of the search warrant.

(3)

There is no rigid rule for determining whether the stated time of observation of the offense is too remote from the time when the affidavit is made or the search warrant issued, but, generally speaking, a lapse of time of less than three weeks will be held not to invalidate the search warrant, while a lapse of four weeks will be held to be so.

A good and practical rule of thumb to measure the nearness of time given in the affidavit as to the date of the alleged offense, and the time of making the affidavit is thus expressed: "The nearer the time at which the observation of the offense is alleged to have been made, the more reasonable the conclusion of establishment of probable cause".[277] (Italics ours.)

The Supreme Court observed that had the respondent judge been cautious in issuing the questioned search warrants he would have wondered, and therefor asked the affiant why the said incident was reported only on May 31, 1972 when he allegedly witnessed it on May 29, 1972. [278]

5. The Need of Competent Proof of Particular Acts or Specific Omissions

The Supreme Court in the celebrated case of *Stonehill v. Diokno* pointed to the need of competent proof of

particular acts or specific omissions in the ascertainment of probable cause:

Two points must be stressed in connection with this constitutional mandate, namely: (1) that no warrant shall issue but upon probable cause, to be determined by the judge in the manner set forth in said provision, and (2) that the warrant shall particularly describe the things to be seized.

None of these requirements has been complied with in the contested warrants. Indeed, the same were issued upon applications stating that the natural and juridical persons therein named had committed a 'violation of Central Bank Laws, Tariff and Customs Laws, Internal Revenue Code and Revised Penal Code.' In other words, no specific offense had been alleged in said applications. The averments thereof with respect to the offense committed were abstract. As a consequence, it was impossible for the judges who issued the warrants to have found the existence of probable cause for the same presuppose the introduction of competent proof that the party against whom it is sought has performed particular acts or committed specific omissions, violating a given provision of our criminal laws. As a matter of fact, the applications involved in this case do not allege any specific acts performed by herein petitioners. It would be a legal heresy, of the highest order, to convict anybody of a 'violation of Central Bank Laws, Tariff and Customs Laws, Internal Revenue (Code) and Revised Penal Code.' — as alleged in the aforementioned applications — without reference to any determinate provision of said laws or codes. [279]

6. Probable Cause to be Determined only by Judge

A notable innovation in this guarantee is found in the Constitution in that it specifically provides that the probable cause upon which a warrant of arrest may be issued, must be determined by the judge after examination under oath, etc., of the complainant and the witnesses he may produce. This requirement — 'to be determined by the judge' — is not found in the Fourth Amendment of the U.S. Constitution, in the Philippine Bill or in the Jones Act, all of which do not specify who will determine the existence of a probable cause. Hence, under their provisions, any public officer may be authorized by the Legislature to make such determination, and thereafter issue the warrant of arrest. Under the express terms of the Constitution, it is, therefore, even doubtful whether the arrest of an individual may be ordered by any authority other than the judge if the purpose is merely to determine the existence of a probable cause, leading to an administrative investigation. The Constitution does not distinguish between warrants in administrative proceedings. And, if one suspected of having committed a crime is entitled to a determination of the probable cause against him, by a judge, why should one suspected of a violation of an administrative nature deserve less guarantee? Of course it is different if the order of arrest is issued to carry out a final finding of a violation, either by an executive or legislative officer or agency duly authorized for the purpose, as then the warrant is not that mentioned in the Constitution which is issuable only on probable cause. Such, for example, would be a warrant of arrest to carry out a final order of deportation, or to effect compliance of an order of contempt. [280]

7. Manner of examination

In determining the existence of probable cause, it is required that: 1) the judge must examine the witnesses personally; 2) the examination must be under oath; and 3) the examination must be reduced to writing in the form of searching questions and answers. [281] These requirements are provided under Section 5, Rule 126 of the Rules of Court. It has been ruled that the existence of probable cause depends to a large degree upon the finding or opinion of the judge conducting the examination; [282] however, the opinion or finding of probable cause must, to a certain degree, be substantiated or supported by the record. [283]

8. Examination is heard ex-parte and may be done in chambers but action must be expedited

An application for a search warrant is heard ex-parte. It is neither a trial nor a part of the trial. [284] The examination or investigation which must be under oath may not be in public. It may be even held in the secrecy of

the chambers. It must be under oath and must be in writing. [285] Action on these applications must, be expedited for time is of the essence. Great reliance has to be accorded by the judge to the testimonies under oath of the complainant and the witnesses. [286] The examination or investigation must not, however, be merely routinary but one that is thorough and elicit the required information. [287]

The searching questions propounded to the applicants of the search warrant and his/her witnesses must depend to a large extent upon the discretion of the Judge just as long as the answers establish a reasonable ground to believe the commission of a specific offense and that the applicant is one authorized by law, and said answers particularly describe with certainty the place to be searched and the persons or things to be seized. The examination or investigation which must be under oath may not be in public. It may be even be held in the secrecy of his/her chambers. Far more important is that the examination or investigation is not merely routinary but one that is thorough and elicit the required information. To repeat, it must be under oath and must be in writing. [288]

9. The need for searching questions and answers by the judge

More emphatic and detailed is the implementing rule of the constitutional injunction, Section 4 of Rule 126 which provides that the judge before issuing the warrant personally examine on oath or affirmation the complainant and any witnesses he may produce and take their depositions in writing and attach them to the record in addition to any affidavits presented to him. [289]

The examination must be probing and exhaustive, not merely routinary or pro forma, if the claimed probable cause is to be established. The examining magistrate must not simply rehash the contents of the affidavits but must take his/her own inquiry on the intent and justification of the application. [290]

Asking of leading questions to the deponent in an application for search warrant, and conducting of examination in a general manner, would not satisfy the requirements for issuance of a valid search warrant. [291]

Personal examination by the judge of the complainant and his/her witnesses is necessary to enable him to determine the existence or non-existence of a probable cause, pursuant to Art. III, Sec. 1, par. 3, of the Constitution, and Rule 126, Sec. 4 of the Rules of Court, both of which prohibit the issuance of warrants except 'upon probable cause.' The determination of whether or not a probable cause exists calls for the exercise of judgment after a judicial appraisal of facts and should not be allowed to be delegated in the absence of any rule to the contrary. [292]

10. Requisite of particular description of things to be seized

The description 'is required to be specific only in so far as the circumstances will ordinarily allow' and 'where by the nature of the goods to be seized their descriptions must rather be general, as this would mean that no warrant would issue.' [293]

Thus, the description 'fraudulent books, invoices and records' was found sufficient. [294]

So also was the description 'books, documents, receipts, lists, chits and other papers used by him in connection with his/her activities as moneylender, charging a usurious rate of interest, in violation of the law.' [295] Justifying the sufficiency of the later description, the Court said:

Taking into consideration the nature of the articles so described, it is clear that no other more adequate and detailed description could have been given, particularly because it is difficult to give a particular description of the contents thereof. The description so made substantially complies with the legal provisions because the officer of the law who executed the warrant was thereby placed in a position enabling him to identify the articles, which he did. [296]

It was, however, held in a much later case that search warrants authorizing the seizure of books of accounts and records " showing all the business transactions" of certain persons, regardless of whether the transactions were legal or illegal, contravene the explicit command major objective of eliminating general warrants.

The Supreme Court observed:

The grave violation of the Constitution made in the application for the search warrants was compounded by the description therein made of the effects to be searched for and seized, to wit:

Books of accounts, financial records, vouchers, journals, correspondence, receipts, ledgers, portfolios, credit journals, typewriters, and other documents and/or papers showing all business transactions including disbursements receipts, balance sheets and related profit and loss statements.

Thus, the warrants authorized the search for and seizure of records pertaining to all business transactions of petitioners herein, regardless of whether the transactions were legal or illegal. the warrants sanctioned the seizure of all records of the petitioners and the aforementioned corporations, whatever their nature, thus openly contravening the explicit contravening the explicit command of our Bill of Rights that the things to be siezed be particularly described - as well as tending to defeat its major objective: the elimination of general warrants.[297]

11. Tests to Determine Particularity

A search warrant may be said to particularly describe the things to be seized:

- (1) When the description therein is as specific as the circumstances will ordinarily allow; [298]or
- (2) When the description expresses a conclusion of fact - not of law by which the warrant officer may be guided in making the search and seizure; [299]or
- (3) When the things described are limited to those which bear direct relation to the offense for which the warrant is being issued. [300]

Thus, if the articles desired to be seized have any direct relation to an offense committed, the applicant must necessarily have some evidence, other than those articles, to prove the said offense; and the articles subject of search and seizure should come in handy merely to strengthen such evidence. In this event, the description contained in the disputed warrant should have mentioned, at least, the dates, amounts, persons, and other pertinent data regarding the receipts of payments, certificates of stocks and securities, contracts, promissory notes, deeds of sale, messages and communication, checks, bank deposits and withdrawals, records of foreign remittances, among others, enumerated in the warrant. [301]

12. Description of place to be seized

It does not suffice, for a search warrant to be deemed valid, that it be based on probable cause, personally determined by the judge, it is essential, too, that it particularly describes the place to be searched, the manifest intention being that the search be confined strictly to the place also described. [302]

Where the affidavit for the search warrant and the search warrant itself described the building to be searched as 'the building No. 124 Calle Arzobispo, City of Manila, Philippine Islands,' this is a sufficient designation of the premises to be searched. It is the prevailing rule that a description of a place to be searched is sufficient if the officer with the warrant can, with reasonable effort, ascertain and identify the place intended. [303] The police officers were accordingly authorized to break down the door and enter the premises of the building occupied by the so-called Parliamentary Club. When inside, they then had the right to arrest the persons presumably engaged in a prohibited game, and to confiscate the evidence of the commission of the crime. It has been held that an

officer making an arrest may take from the person arrested any money or property found upon his/her person, which was used in the commission of the crime or was the fruit of the crime, or which may furnish the person arrested with the means of committing violence or of escaping, or which may be used as evidence on the trial of the case, but not otherwise. [304]

13. Determination of Whether Search Warrant Describes Premises with Particularity

In the determination of whether a search warrant describes the premises to be searched with sufficient particularity, it has been held 'that the executing officer's prior knowledge as to the place intended in the warrant is relevant. This would seem to be especially true where the executing officer is the affiant on whose affidavit the warrant had issued, and when he knows that the judge who issued the warrant intended the building described in the affidavit. And it has also been said that the executing officer may look to the affidavit in the official court file to resolve an ambiguity in the warrant as to the place to be searched.' [305]

The principle does not apply where there is no ambiguity on the face of the search warrant as to the description of the place to be searched. The place to be searched as set out in the warrant cannot be amplified or modified by the officer's own personal knowledge of the premises, or the evidence they adduced in support of their application for the warrant. x x x The particularization of the description of the place to be searched may properly be done only by the Judge, and only in the warrant itself; it cannot be left to the discretion of the police officers conducting the search. [306]

IX. PROVISIONAL REMEDIES

Rules of Court Rule 127 Provisional Remedies In Criminal Cases

Sec. 1. Availability of provisional remedies. – The provisional remedies in civil actions, insofar as they are applicable, may be availed of in connection with the civil action deemed instituted with the criminal action.

Sec. 2. Attachment.- When the civil actions is properly instituted in the criminal action as provided in Rule 111, the offended party may have the property of the accused attached as security for the satisfaction of any judgment that may be recovered from the accused in the following cases:

(a)

When the accused is about to abscond from the Philippines;

(b)

When the criminal action is based on a claim for money or property embezzled or fraudulently misapplied or converted to the use of the accused who is a public officer, officer of a corporation, attorney, factor, broker, agent or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or a willful violation of duty;

(c)

When the accused has concealed, removed, or disposed of his property, or is about to do so; and

(d)

When the accused resides outside the Philippines.

PART TWO PROCEDURE IN SANDIGANBAYAN

I. STAGES IN CRIMINAL CASES

- Filing of the Information after preliminary investigation conducted by the Office of the Ombudsman.
- Judicial determination of probable cause to be determined by the Justices concerned.

2.1 If the Court finds the existence of probable cause, the Court shall cause the issuance of Warrant of Arrest and Hold-departure Order against the accused, the first through the Chairman only, the second by Division – that is three (3) Justices signing the order;

2.2 In some cases, the Court directs the Office of the Clerk of Court to schedule a hearing on the Information notifying only the prosecution (anent said hearing the Court may call the attention of the prosecution and to direct it to file a necessary pleading why the case should not be dismissed for lack of jurisdiction, why the information should not be quashed, why the accused should not be granted bail if the Office of the Ombudsman recommends no bail but the offense as seen by the Court is bailable);

2.3 Possible Motion to Amend Information filed by the prosecution.

- Arrest/Voluntary Surrender of the accused
- Posting of Bail

4.1 Possible motion for reinvestigation filed by accused. (alleging that accused was deprived of his/her right to file a motion for reconsideration before the Office of the Ombudsman on the latter's resolution/decision as mandated by Section 27 of the Ombudsman Act of 1989).

4.2 Possible Motion to Withdraw Information/To Quash Information/Motion to Dismiss even if Motion for Re-Investigation is denied and/or granted.

- Arraignment and plea

5.1

Possible filing of a Motion to Suspend accused Pendente Lite by the prosecution.

5.2

Possible Motion to Travel Abroad filed by the accused.

5.2.1

The court will require certain conditions in the event said motion is granted such as posting of additional travel cash bond, conformity of the bondsmen if any, etc.

5.2.2

In some cases where accused files a Motion to Travel Abroad before his/her arraignment, the Court, during the hearing on the said Motion shall conduct/require a conditional arraignment of the accused if the case is pending re-investigation so that in the event the accused fails/refuses to return in the country, the court may opt to conduct a trial in absentia.

5.2.3

Possible Motion for Consolidation, if applicable.

- Pre-trial

6.1

Submission of Joint stipulation of facts.

6.2

Issuance of Pre-Trial Inquest (Sec. 6 Rule VI)

6.3

Pre-Trial Order reciting the actions and/or proceedings taken and the alteration of presentation of evidence if warranted.

- Trial

7.1

Prosecution presents evidence and rests case.

7.2

Possible filing of Demurrer to Evidence/Motion to Dismiss.

7.3

Presentation of defense evidence if Demurrer to Evidence/Motion to Dismiss is denied.

- Judgment (Decision)
- New Trial or Reconsideration
- Appeal – Petition for Review for Certiorari under Rule 45

II. CIVIL CASES

A. Cases Covered

1. Those filed under Exec. Order Nos. 1, 2, 14 and 14-A promulgated by President Corazon Aquino referring to the recovery of ill-gotten wealth of former President Ferdinand Marcos/members of his family/close relatives/subordinated/cronies/agents/ dummies – by the PCGG.
2. Hearing on the validity of Writ of Sequestration or freeze or Hold Order issued by the PCGG;

B. Stages in Civil Cases

1. Pre-trial after last pleading is filed
2. Trial

2.1

Plaintiff presents evidence and rests case

2.2

Defendant presents evidence and rests case

3. Memoranda if requested by the parties
4. Judgment
5. Motion for Reconsideration/New Trial by any party
6. Appeal

III. PROCEDURE ON APPEALED CASES

(Anti-Graft cases decided by the RTC involving minor officials) [307]

A. Mode of Appeal

Petition For Review (not Notice Of Appeal) pursuant to Sec. 4 (b) Pres. Decree No. 1606 and Sec. 39 Batas Blg. 129.

B. Stages in Appeals

1. Transmittal of the entire record, exhibits, stenographic notes, etc. by the court a quo to the Docket and Records Section;
2. Case shall be entered into the Sandiganbayan Docket and raffled off to the proper Division.

3. The Court after ascertaining the completeness of all the evidence, oral and documentary, attached to the record, shall require the appellant to file with the court, within forty-five (45) days from receipt of said notice seven (7) copies of his/her legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee. [308]

4. Within forty-five (45) days from receipt of the appellant's brief, the appellee shall file with the court seven (7) copies of his/her brief with the court which shall be accompanied by proof of service of two (2) copies thereof upon the appellant. [309]

4.1 Extension of Time for filing briefs will not be allowed except for good and sufficient cause and only if the motion for extension is filed before the expiration of the time sought to be extended. [310]

4.2 Within twenty (20) days from receipt of the appellee's brief, the appellant may file a reply brief answering points in the appellees brief not covered in his/her main brief. [311]

4.3 Possible filing of a Motion for New Trial.

5. Judgment

5.1 Possible Motion for Reconsideration

6. Appeal to the Supreme Court, through Petition for Review on certiorari under Rule 45.

[1] People v. Mariano, No. L-40527, June 30, 1976, 71 SCRA 600.

[2] Manila Railroad Co. v. Attorney General, 20 Phil. 523 [1911]; U. S. v. Jayme, 24 Phil. 90 [1913].

[3] Reyes v. Diaz, 73 Phil. 484 [1941].

[4] Velunta v. Chief, Philippine Constabulary, No. L-71855, January 20, 1988, 157 SCRA 147.

[5] People v. Mariano, supra, note 1.

[6] De La Cruz v. Moya, No. L-65192, April 27, 1988, 160 SCRA 838.

[7] People v. Chupeco, G. R. L-19568, March 31, 1964, 10 SCRA 640.

[8] People v. Magallanes, G. R. No. 118013-4, October 11, 1995, 249 SCRA 212.

[9] Buaya v. Polo, G. R. No. 75079, January 26, 1989, 169 SCRA 471.

[10] Cuyos v. Garcia, G. R. No. 46934, April 15, 1988, 160 SCRA 302.

[11] People v. Malabanan, No. L-16478, August 31, 1961, 2 SCRA 1185.

[12] People v. Eduarte, G. R. No. 88232, February 26, 1990, 182 SCRA 750.

[13] People v. Mercado, 65 Phil. 665 [1938]; Manila Railroad Co. v. Attorney General, supra, note 2.

[14] Art. VIII, Sec. 5 (4).

[15] Republic v. Sunga, No. L-38634, June 20, 1988, 162 SCRA 191 citing Crespo v. Mogul, No. L-53373, June 30, 1987, 151 SCRA 462.

[16] People v. Metropolitan Trial Court of Quezon City, Br. 32, G.R. No. 12326, December 16, 1996, 265 SCRA 645.

- [17] Omnibus Election Code, Sec. 184.
- [18] Morales v. Court of Appeals, G. R. No. 126623, December 12, 1997, 283 SCRA 211.
- [19] Morales v. Court of Appeals, *supra*, note 18.
- [20] People v. Magallanes, *supra*, note 8.
- [21] Batas Blg. 129, Sec. 32.
- [22] Summary Rules, Sec. 1.B, in relation to Batas Blg. 129, Sec. 32.
- [23] Guevarra v. Almodovar, G. R. No. 75256, January 26, 1989, 169 SCRA 476.
- [24] B. P. Blg. 129; El Pueblo de Filipinas v. San Juan, 69 Phil. 347 [1940].
- [25] B. P. Blg. 129, Sec. 32; United States v. Bernardo, 19 Phil. 265 [1911]; Legados v. De Guzman, G. R. No. 35825, February 20, 1989, 170 SCRA 357.
- [26] BP Blg. 129, Sec. 35.
- [27] Rules of Court, Rule 110, Sec. 2.
- [28] *Ibid*, Sec. 3.
- [29] *Ibid*, Sec. 4.
- [30] *Ibid*, Sec. 1.
- [31] *Ibid*, Rule 112, Sec. 1.
- [32] Rules of Court, Rule 110, Sec. 1.
- [33] *Ibid*.
- [34] Rules of Court, Rule 110, Sec. 5.
- [35] *Ibid*, Sec. 16.
- [36] Rules of Court, Rule 110, Sec. 5.
- [37] People v. Pineda, No. L-26222, July 21, 1967, 20 SCRA 748.
- [38] People v. Devaras, G. R. Nos. 100938-9, December 15, 1993, 228 SCRA 482.
- [39] People v. Nazareno, G. R. No. 103964, August 1, 1996, 260 SCRA 256.
- [40] Galvez v. Court of Appeals, G. R. No. 114046, October 24, 1994, 237 SCRA 685.
- [41] Crespo v. Mogul, No. L-53373, June 30, 1987, 151 SCRA 462.
- [42] Velasquez v. Undersecretary of Justice, G. R. No. 88442, February 1, 1990, 182 SCRA 388.
- [43] Sta. Rosa Mining Co. v. Zabala, No. L-44723, August 31, 1987, 153 SCRA 367.
- [44] Dungog v. Court of Appeals, No. L-77580-51, March 25, 1988, 159 SCRA 145.
- [45] Republic v. Sunga, , *supra*, note 15.
- [46] Marcelo v. Court of Appeals, G. R. No. 106695, August 4, 1994, 235 SCRA 39; Roberts v. Court of Appeals,

G. R. No. 113930, March 5, 1996, 254 SCRA 307; Dimatulac v. Villon, G. R. No. 12707, October 12, 1998, 297 SCRA 679; Solar Team Entertainment, Inc. v. How, G. R. No. 140863, August 22, 2000.

[47] People v. Montesa, G. R. No. 114302, September 29, 1995, 248 SCRA 641.

[48] Roberts v. Court of Appeals, supra, note 45.

[49] Ledesma v. Court of Appeals, G. R. No. 113216, September 5, 1997, 278 SCRA 656; Solar Team Entertainment, Inc. v. How, supra, note 45.

[50] Perez v. Hagonoy Rural Bank, G. R. No. 126210, March 9, 2000.

[51] Martinez v. Court of Appeals, G. R. No. 112387, October 13, 1994, 237 SCRA 575; Roberts v. Court of Appeals, supra, note 45; Ledesma v. Court of Appeals, supra, note 48; Perez v. Hagonoy Rural Bank, supra, note 50; Jalandoni v. Secretary of Justice, G. R. Nos. 115239-40, March 2, 2000.

[52] Ledesma v. Court of Appeals, supra, note 49; Solar Team Entertainment v. How, supra, note 46.

[53] Rules of Court, Rule 110, Sec. 7.

[54] Ibid, Sec. 8.

[55] Ibid, Sec. 9.

[56] Ibid, Sec. 6.

[57] Ibid, Sec. 11.

[58] Ibid.

[59] Ibid, Sec. 6.

[60] Ibid, Sec. 9.

[61] As amended by Rep. Act No. 7659, Sec. 11.

[62] People v. Garcia, G. R. No. 120093, November 6, 1997, 281 SCRA 463.

[63] People v. Perez, G. R. No. 122764, September 24, 1998, 296 SCRA 17; People v. Bolatete, G. R. No. 127570, February 13, 1999, 303 SCRA 709; People v. de la Cuesta, G. R. No. 126134, March 2, 1999, 304 SCRA 83; People v. Ambray, G. R. No. 127177, February 25, 1999, 303 SCRA 697.

[64] People v. Cantos, G. R. No. 129298, April 14, 1999, 305 SCRA 876.

[65] People v. Manggasin, G. R. No. 130599-60, April 21, 1999, 306 SCRA 228.

[66] People v. Maglente, G. R. Nos. 1124559-66, April 30, 1999, 306 SCRA 546.

[67] People v. Manggasin, supra, note 65.

[68] Rules of Court, Rule 110, Section 13

[69] People v. Tumlos, 67 Phil. 320 [1939].

[70] People V. Jaranilla, No. I-28547, February 22, 1974, 55 SCRA 563

[71] People v. De Leon, 49 Phil. 437 [1926].

[72] People v. Sabbun, No. L-18510, January 31, 1964, 10 SCRA 156.

- [73] Santiago v. Garchitorena, G. R. No. 109266, December 2, 1993, 228 SCRA 214
- [74] People v. Dichupa, 113 Phil. 306 [1961].
- [75] People v. Cid, 66 Phil. 354 [1938].
- [76] People v. Ledesma, No. L-415522, September 29, 1976, 73 SCRA 77.
- [77] Gamboa v. Court of Appeals, No. L-41054, November 28, 1975, 68 SCRA 308.
- [78] Ibid.
- [79] People v. Hubilo, G. R. No. 101741, March 23, 1993, 220 SCRA 389; People v. Cogonan, G. R. No. 94548, October 4, 1996, 262 SCRA 693
- [80] People v. Ducay, G. R. No. 86939, August 2, 1993, 225 SCRA 1.
- [81] People v. Tabaco, G. R. Nos. 100382-5, March 19, 1997, 270 SCRA 32 citing Reyes I Revised Penal Code 655 [1993].
- [82] Ibid.
- [83] People v. Victor, G. R. Nos. 75154-55, February 6, 1990, 181 SCRA 818.
- [84] Ibid.
- [85] People v. Guillen 85 Phil. 307 [1950].
- [86] People v. Alagao, No. L-20721, April 30, 1966, 16 SCRA 879.
- [87] Sanchez v. Demetriou, G. R. Nos. 111771-77, November 9, 1993, 227 SCRA 627.
- [88] Ibid.
- [89] Ilagan v. Court of Appeals, G. R. No. 119617, December 29, 1994, 239 SCRA 575.
- [90] People v. Feloteo, G.R. No. 124212, June 5, 1998, 290 sCRA 627.
- [91] G.R. Nos. 115008-09, July 24, 1996, 259 SCRA 191 [1996]; People v. Molina, G.R. No. 115835-36, July 22, 1998, 292 sCRA 742.
- [92] Rep. Act No. 1700 was repealed by Rep. Act No. 7636.
- [93] People v. Pimentel, G.R. No. 100210, April 1, 1998, 288 SCRA 542.
- [94] People v. Molina, supra, Note 91.
- [95] People v. Valdez, G.R. No. 127663, March 11, 1999, 304 SCRA 611.
- [96] Reodica v. Court of Appeals, G. R. No. 125066, July 8, 1998, 292 SCRA 87 citing Lontok v. Gorgonio, Jr., No. L-37396, April 30, 1979, 89 SCRA 632.
- [97] Rep. Act No. 7691, Sec. 2.
- [98] Rules of Court, Rule 110, Sec. 14.
- [99] G.R. No. 104392, February 20, 1996, 253 SCRA 674.
- [100] G.R. No. 119771, April 24, 1998, 289 SCRA 568.

- [101] *Western Institute of Technology v. Salas*, G. R. No. 113032, August 21, 1997, 278 SCRA 216.
- [102] *Elcano v. Hill*, No. L-24803, May 26, 1977, 77 SCRA 98.
- [103] Revised Penal Code, Art. 100.
- [104] *Ibid*, Art. 104.
- [105] *Ibid*, Art. 102.
- [106] *Ibid*, Art. 103.
- [107] *Elcano v. Hill*, *supra*, note 102; *Jarantilla v. Court of Appeals*, G. R. No. 80194, March 21, 1989, 171 SCRA 429; *Ace Haulers Corporation v. Court of Appeals*, G. R. No. 127934, August 23, 2000.
- [108] Rules of Court, Rule 111, Sec. 2(b).
- [109] *Ibid*, Sec. 5.
- [110] *Ibid*, Secs. 6 and 7.
- [111] Rules of Court, Rule 112, Sec. 6 (b); *Ortiz v. Palaypayon*, A. M. No. MTJ-93-823, July 25, 1994, 234 SCRA 391.
- [112] *Samulde v. Salvani, Jr.*, No. L-78606, September 26, 1988, 165 SCRA 734.
- [113] Rules of Court, Rule 113, Sec. 5 (b).
- [114] *Ibid*, Rule 112, Sec. 9 (b).
- [115] Rules of Court, Rule 116, Sec. 1 (e).
- [116] Rules of Court, Rule 116, Sec. 1 (g); SC Circular No. 38-98.
- [117] *People v. Abner* 87 Phil. 566 [1950].
- [118] Rules of Court, Rule 116.
- [119] SC Circular No. 1-89.
- [120] SC Circular No. 38-98, Sec. 4.
- [121] SC Circular No. 38-98, Sec. 2.
- [122] *People v. Alicando*, G. R. No. 117487, December 12, 1995, 251 SCRA 293.
- [123] Rules of Court, Rule 118, Sec. 1; SC Circular No. 38-98, Secs. 2 and 3.
- [124] Rules of Court, Rule 118, Sec. 2; SC Circular No. 38-98, Sec. 4.
- [125] Rules of Court, Rule 118, Sec. 3; SC Circular No. 38-98, Sec. 5.
- [126] Rules of Court, Rule 118, Sec. 4.
- [127] *Ocampo v. Bernabe*, 77 Phil. 55 [1946].
- [128] *Basco v. Rapatala*, A. M. No. RTJ-96-1335, March 5, 1997, 269 SCRA 230.
- [129] *People v. Dacudao*, G. R. No. 81389, February 21, 1989, 170 SCRA 489; *People v. San Diego*, No. L-29676, December 24, 1968, 26 SCRA 522; *People v. Calo*, G. R. No. 88531, June 18, 1990, 186 SCRA 620;

Morado v. Tayao, A. M. No. 93-8-1204RTC, February 7, 1994, 229 SCRA 723; Corpus v. Maglalang, G. R. No. 78162, April 19, 1991, 196 SCRA 41; Almeron v. Sandido, A. M. No. MTJ-97-1142, November 6, 1997, 281 SCRA 415.

[130] Librarios v. Dabalos, A. M. No. RTJ-89-286, July 11, 1991, 199 SCRA 48 cited in Borinaga v. Tamin, A. M. No. RTJ-93-936, September 10, 1993, 226 SCRA 206; Aurillo v. Francisco, A. M. RTJ-93-1097, August 12, 1994, 235 SCRA 283; Aguirre v. Belmonte, A. M. No. RTJ-93-1052, October 27, 1994, 237 SCRA 778; Santos v. Otilida, A. M. No. RTJ-94-1217, June 16, 1995, 245 SCRA 56; De los Santos-Reyes v. Montesa, A. M. No. RTJ-93-983, August 7, 1995, 247 SCRA 85; Tabao v. Espina, RTJ-96-13447, June 14, 1996, 257 SCRA 298.

[131] Rules of Court, Rule 114, Sec. 18.

[132] Rules of Court, Rule 114, Secs. 7 and 8.

[133] Baylon v. Sison, A. M. No. 92-7-360-0, April 6, 1995, 243 SCRA 284.

[134] Rules of Court, Rule 114, Sec. 19.

[135] Basco v. Rapatalo, A. M. No. 96-1335, March 5, 1997, 269 SCRA 220 reiterated in People v. Cabral, G. R. No. 131909, February 18, 1999, 303 SCRA 361.

[136] Feliciano v. Pasicolan, No. L-14567, July 31, 1967, 2 SCRA 888; Mendoza v. CFI of Quezon, Nos. L-35612-14, June 27, 1973, 51 SCRA 369; Paderanga v. Court of Appeals, G. R. No. 115407, August 28, 1995, 247 SCRA 741; Aguirre v. Belmonte, supra, note 130; De los Santos-Reyes v. Montesa 247 SCRA 85.

[137] Dinapol v. Baldado, A. M. No. RTJ-92-898, August 5, 1993, 225 SCRA 110; Borinaga v. Tamin, supra, note 130; Aguirre v. Belmonte, supra, note 130.

[138] Rules of Court, Rule 114, Sec. 18; Chin v. Gustilo, A.M. No. RTJ-94-1243, August 11, 1995, 247 SCRA 175.

[139] Rules of Court, Rule 114, Sec. 18; Borinaga v. Tamin, supra, note 130, Go v. Court of Appeals, April 7, 1993, 221 SCRA 397; People v. Dacudao, G. R. No. 81389, February 21, 1989, 170 SCRA 489; People v. Casingal, G. R. No. 87163, March 29, 1995, 243 SCRA 37; Lardizabal v. Reyes, A. M. No. MTJ-94-877, December 5, 1994, 238 SCRA 640; Tabao v. Espina, supra, note 130; Santos v. Otilida supra, note 131.

[140] People v. Dacudao, supra, note 129; Borinaga v. Tamin, supra, note 130; Guillermo v. Reyes, 240 SCRA 154; Mamolo, Sr. v. Narisma, A. M. No. MTJ-96-1072, January 31, 1996, 252 SCRA 613; People v. Calo, G. R. No. 88531, June 18, 1990, 186 SCRA 620.

[141] Borinaga v. Tamin, supra, note 130; Libarios v. Dabalos, A. M. No. RTJ-89-286, July 11, 1991, 199 SCRA 48; Aguirre v. Belmonte, supra, note 130; Baylon v. Sison, supra, note 133; Tucay v. Domagas, A. M. No. RTJ-95-1286, March 2, 1995, 242 SCRA 110; Paderanga v. Court of Appeals, G. R. No. 115407, August 28, 1995, 247 SCRA 741.

[142] Adm. Circular No. 2-92; People v. Divina, G. R. Nos. 93808-09, April 7, 1993, 221 SCRA 209; People v. Fuertes, G. R. No. 90643, June 25, 1993, 223 SCRA 619; People v. Nitcha, G. R. No. 113517, January 19, 1995, 240 SCRA 283.

[143] Rules of Court, Rule 114, Sec. 5.

[144] Ibid.

[145] Rules of Court, Rule 114, Sec. 24.

[146] Ibid.

[147] *People v. Baesa*, 104 Phil. 136 [1958].

[148] Rules of Court, Rule 119, Sec. 17.

[149] *Flores v. Sandiganbayan*, No. L-63677, August 12, 1983, 124 SCRA 409.

[150] Rules of Court, Rule 119, Sec. 17 (a).

[151] *Flores v. Sandiganbayan*, supra, note 149.

[152] *Flores v. Sandiganbayan*, supra, note 149; *People v. Aniñon*, No. L-39803, March 16, 1988, 158 SCRA 701; *Lugtu v. Court of Appeals*, G. R. No. 42037, March 21, 1990, 183 SCRA 388.

[153] *Can v. Galing*, G. R. No. 54258, November 27, 1987, 155 SCRA 663.

[154] Rules of Court, Rule 119, Sec. 17 (b); *People v. Aniñon*, supra, note 152.

[155] Rules of Court, Rule 119, Sec. 17(c).

[156] Rules of Court, Rule 119, Sec. 17(d).

[157] Ibid, Sec. 6(d); *People v. Court of Appeals*, No. L-55533, July 31, 1984, 131 SCRA 107.

[158] *People v. Faltado* 84 Phil. 89 [1949].

[159] *People v. Court of Appeals*, No. L-62881, August 20, 1983, 124 SCRA 338.

[160] Ibid.

[161] Rules of Court, Rule 119, Sec. 17(e).

[162] *Moore v. State* 67 So. 789.

[163] 54 CJS 935.

[164] 54 CJS 935.

[165] *People v. Jamero*, No. L-19852, July 29, 1968, 24 SCRA 206.

[166] *In re Abesamis*, 102 Phil 1182 [1958].

[167] *In re Basa* 41 Phil. 275 [1920].

[168] *In re Isada* 60 Phil. 915 [1934].

[169] *Chiong v. Republic* 103 Phil 1114 [1958].

[170] Rules of Court, Rule 119, Sec. 17.

[171] Ibid.

[172] Rules of Court, Rule 119, Sec. 18.

[173] Ibid.

[174] *People v. Mendiola* 82 Phil. 740 [1949].

[175] *People v. Beberino*, No. L-23092, October 29, 1977, 79 SCRA 694.

- [176] *People v. Jamero*, supra, note 165; *Mangubat v. Sandiganbayan*, No. L-60613, April 20, 1985, 135 SCRA 732; *Ramos v. Sandiganbayan*, G. R. No. 58876, November 27, 1990, 191 SCRA 671.
- [177] *Mendiola v. Macadaeg*, No. L-16874, February 27, 1961, 1 SCRA 593; *Benitez v. Concepcion*, 112 Phil. 105 [1961].
- [178] *People v. Aragon* 94 Phil 357 [1954].
- [179] *Zapanta v. Montesa* No. L-14534, February 28, 1962, 4 SCRA 510.
- [180] *Ras v. Rasul*, Nos. L-50441-42, September 18, 1980, 100 SCRA 125.
- [181] Rules of Court, Rule 111, Sec. 7.
- [182] *Fortich-Celdran v. Celdran*, No. L-22677, February 28, 1967, 19 SCRA 502.
- [183] Rules of Court, Rule 111, Sec. 6.
- [184] Revised Penal Code, Art. 89 (1).
- [185] Rules of Court, Rule 111, Sec. 4.
- [186] *Torrijos v. Court of Appeals*, No. L-40336, October 24, 1975, 67 SCRA 394.
- [187] *Pimentel v. Salanga*, No. L-29734, September 18, 1967, 21 SCRA 160.
- [188] SC Circular No. 10, May 22, 1987.
- [189] Adm. Circular No. 1, January 28, 1988.
- [190] *Gutierrez v. Santos* 112 Phil. 184 [1961].
- [191] *Hacienda Benito v. Court of Appeals*, L-75297, August 12, 1987, 153 SCRA 46.
- [192] Adm. Matter No. 90-8-1863RTC, October 4, 1990, Minute Resolution.
- [193] *Aparicio v. Andal*, G. R. Nos. 86587-93, July 25, 1989, 175 SCRA 659.
- [194] *Lorenzo v. Marquez*, A. M. No. MTJ-87-123, June 27, 1988, 162 SCRA 546.
- [195] *McDonald's Corporation v. Court of Appeals*, G. R. No. 98699, July 15, 1991. (Minute Resolution, First Division)
- [196] SC Circular 38-98, Sec. 6.
- [197] Circular 38-98, Sec. 8.
- [198] SC Circular 38-98, Sec. 9.
- [199] *Ibid*, Sec. 10.
- [200] SC Circular 38-98., Sec. 11.
- [201] *Ibid*, Sec. 7.
- [202] SC Circular 38-98, Sec. 12.
- [203] Circular 38-98, Sec. 13.
- [204] Circular 38-98, Sec. 14.

- [205] Circular 38-98, Sec. 15.
- [206] Rules of Court, Rule 119, Sec. 4 .
- [207] Rules of Court, Rule 119, Sec. 5 .
- [208] Rules of Court, Rule 119, Sec. 7 .
- [209] Rules of Court, Rule 101 .
- [210] Rules of Court, Rule 119, Sec. 23.
- [211] Aquino v. Sison, G. R. No. 86025, November 28, 1989, 179 SCRA 648; Godoy v. Court of Appeals, No. L-80814, August 30, 1988, 165 SCRA 148.
- [212] People v. The City Court of Silay, L-43790, December 9, 1976, 74 SCRA 247.
- [213] Rules of Court, Rule 119, Sec. 24.
- [214] Rules of Court, Rule 120, Sec. 1 .
- [215] Abay v. Garcia, G. R. No. 66132, June 27, 1988, 162 SCRA 665.
- [216] People v. Escobar, G. R. No. 69564, January 29, 1988, 157 SCRA 541.
- [217] People v. Licerio, 61 Phil. 361 [1935].
- [218] Rules of Court, Rule 120, Section 3 ; People v. Basoy, G. R. No. 68578, July 7, 1986, 142 SCRA 476; People v. Alcid, G. R. No. 66387-88, February 28, 1985, 135 SCRA 280.
- [219] Rules of Court, Rule 120, Sec. 4 .
- [220] Rules of Court, Rule 120, Sec. 5 .
- [221] People v. Morallano, G. R. No. 105004, July 24, 1997, 276 SCRA 84.
- [222] People v. Teehankee, Jr., G. R. Nos. 111206-08, October 6, 1995, 249 SCRA 54; People v. Quilaton, G. R. No. 69666, January 23, 1992, 205 SCRA 279.
- [223] People v. Villanueva, G. R. No. 96469, October 21, 1992, 215 SCRA 22; People v. Cordero, G. R. No. 108919, October 11, 1996, 263 SCRA 122.
- [224] People v. Castillo, G. R. No. 116122, September 6, 1996, 261 SCRA 493.
- [225] People v. Mangila, G. R. Nos. 130203-4, February 15, 2000.
- [226] People v. Marabillas, G. R. No. 127494, February 18, 1999, 303 SCRA 352; People v. Mostrales, G. R. No. 125397, August 28, 1998, 294 SCRA 701; People v. Ilao, G. R. No. 129529, September 20, 1998, 296 SCRA 658.
- [227] People v. Prades, G. R. No. 127569, July 30, 1998, 293 SCRA 411; People v. Malapo, G. R. No. 123115, August 25, 1998, 294 SCRA 579; People v. Lozano, G. R. No. 125080, September 25, 1998, 296 SCRA 403; People v. Padilla, G. R. No. 126124, January 30, 1999.
- [228] People v. Victor, G. R. No. 127903, July 9, 1998, 292 SCRA 186; People v. Prades, supra, note 227; People v. Malapo, supra, note 227; People v. Perez, G. R. No. 122764, September 24, 1998, 296 SCRA 17.
- [229] People v. Cordero, G. R. No. 108919, October 11, 1996, 263 SCRA 122; People v. Cayabyab, G. R. No. 123073, June 19, 1997, 274 SCRA 387; People v. Morollano, G. R. No. 105004, July 24, 1997, 276 SCRA 84;

Sumalpong v. Court of Appeals, G. R. No. 123404, February 26, 1997, 268 SCRA 764.

[230] Sumalpong v. Court of Appeals, *supra*, note 229.

[231] People v. Manggasin, G. R. No. 130599-600, April 21, 1999, 306 SCRA 228.

[232] Padilla v. Court of Appeals, No. 39999, May 31, 1994, 129 SCRA 558; People v. Jalandoni, No. L-57555, August 28, 1984, 131 SCRA 454.

[233] De Guzman v. Alvia, 96 Phil 558 [1955]; People v. Pantig, 97 Phil. 748.

[234] Castro v. Collector of Internal Revenue, L-12174, April 26, 1962, 4 SCRA 1093; Republic v. Bello, No. L-34906, January 27, 1983, 120 SCRA 203.

[235] Rules of Court, Rule 120, Section 7.

[236] Ramos v. Gonong, No. L-42010, August 31, 1976, 72 SCRA 559.

[237] Rules of Court, Rule 36, Section 2.

[238] The record shall contain the dispositive part of the judgment and shall be signed by the Clerk of Court.

[239] Rules of Court, Rule 121, Sec. 2.

[240] People v. Bocar, 97 Phil. 398 [1955]; People v. Curiano, Nos. L-15256-7, October 31, 1963, 9 SCRA 323, 9 SCRA 323.

[241] Negligence or incompetence is not a ground for new trial unless it is so gross as to amount to deprivation of due process.

[242] Jose v. Court of Appeals, No. L-38581, March 31, 1976, 70 SCRA 257

[243] Rules of Court, Rule 121, Sec. 3.

[244] Rules of Court, Rule 121, Sec. 4.

[245] In criminal cases, the lack of affidavits of merit in a motion for new trial is not a fatal defect and can be cured by the testimony presented at the new trial. Paredes v. Borja, L-15559, November 29, 1961, 3 SCRA 495.

[246] Rules of Court, Rule 121, Sec. 5 .

[247] Rules of Court, Rule 121, Sec. 6 .

[248] Toribio v. Diaz, G. R. No. 84623, May 8, 1992, 208 SCRA 595; Bernardo v. Balagot, G. R. No. 86561, November 16, 1992, 215 SCRA 526.

[249] Last sentence, second paragraph, Sec. 4, PD 965, as amended.

[250] Llamado v. Court of Appeals, G. R. No. 84850, June 29, 1989, 174 SCRA 566.

[251] Pres. Decree No. 968, Sec. 9.

[252] The post-sentence investigation report must be submitted by the probation officer to the Court within 60 Days from receipt of the court's order to conduct the investigation.

[253] An order granting or denying probation shall not be appealable. Last para., sec. 4, PD 968, as amended.

[254] Pres. Decree No. 968, Sec. 4.

- [255] Pres. Decree No. 968, Secs. 10 and 14.
- [256] Pres. Decree No. 968, Sec. 10(k).
- [257] Pres. Decree No. 968, Sec. 11.
- [258] Pres. Decree No. 968, Sec. 12, 1st par.
- [259] Pres. Decree No. 968, Sec. 12, 2nd par.
- [260] Pres. Decree No. 968, Sec. 13, 1st par.
- [261] Pres. Decree No. 968, Sec. 18, 2nd par.
- [262] Pres. Decree No. 968, Sec. 13, last par., 2nd par.
- [263] *Baclayon v. Mutia*, No. L-59298, April 30, 1984, 129 SCRA 148; *Bala v. Martinez*, G. R. No. 67301, January 29, 1990, 181 SCRA 459.
- [264] PD 968, Sec. 13, 2nd par.
- [265] *Bala v. Martinez*, *supra*, note 262.
- [266] Sec. 16, PD 968
- [267] *Bala v. Martinez*, *supra*, note 262.
- [268] *Washington Distillers v. Court of Appeals*, G. R. No. 118151, August 22, 1996, 260 SCRA 821.
- [269] *Savage v. Taypin*, G. R. No. 134217, May 11, 2000.
- [270] *Burgos, Sr. v. Chief of Staff*, No. L-64261, December 26, 1984, 133 SCRA 815; *Quintero v. National Bureau of Investigation*, No. L-35149, June 23, 1988, 162 SCRA 483; *Pendon v. Court of Appeals*, G. R. No. 84873, November 16, 1990, 191 SCRA 429; *Manalili v. Court of Appeals*, G. R. No. 113447, October 9, 1997, 280 SCRA 400; *People v. Montilla*, G. R. No. 123872, January 30, 1998, 285 SCRA 703.
- [271] *Prudente v. Dayrit*, G. R. No. 82870, December 14, 1989, 180 SCRA 69.
- [272] *Alvarez v. Court of First Instance of Tayabas* 64 Phil. 33 [1937]; *Burgos, Sr. v. Chief of Staff*, *supra*, note 269; *20th Century Fox Film Corporation v. Court of Appeals*, Nos. L-76649-51, August 19, 1988, 164 SCRA 655; *Silva v. Regional Trial Court of Negros Oriental*, G. R. No. 81756, October 21, 1991, 203 SCRA 140.
- [273] *Alvarez v. Court of First Instance*, *supra*, note 272.
- [274] *Mata v. Bayona*, No. L-50720, March 26, 1984, 128 SCRA 388
- [275] *Quintero v. National Bureau of Investigation*, *supra*, note 270; *Burgos v. Chief of Staff*, *supra*, note 270.
- [276] *Prudente v. Dayrit*, *supra*, note 271.
- [277] *Asian Surety and Insurance Co. v. Herrera*, No. L-25232, December 20, 1973, 54 SCRA 312.
- [278] *Quintero v. National Bureau of Investigation*, *supra*, note 270.
- [279] *Stonehill v. Diokno*, No. L-19550, June 19, 1967, 20 SCRA 383; *La Chemise Lacoste, S. A. v. Fernandez*, No. L-63796-7, May 21, 1984, 129 SCRA 373.
- [280] *Qua Chee Gan v. Deportation Board*, No. L-10280, September 30, 1963, 9 SCRA 27.

- [281] *Marinas v. Siochi*, Nos. L-25707 and 25753-4, May 14, 1981, 104 SCRA 423; *Ponsica v. Ignalaga*, G. R. No. 72301, July 31, 1987, 152 SCRA 647.
- [282] *Luna v. Plaza*, G. R. No. L-27511, November 29, 1968, 26 SCRA 310.
- [283] *Pendon v. Court of Appeals*, G. R. No. 84873, November 16, 1990, 191 SCRA 429.
- [284] *La Chemise Lacoste, S. A. v. Fernandez*, supra, note, 279.
- [285] *Mata v. Bayona*, supra, note 274.
- [286] *La Chemise Lacoste v. Fernandez*, supra, note 278.
- [287] *Mata v. Bayona*, supra, note 274.
- [288] *Mata v. Bayona*, supra, note 274.
- [289] *Mata v. Bayona*, supra, note 274.
- [290] *Roan v. Gonzales*, L-71410, November 25, 1986, 145 SCRA 686.
- [291] *Nolasco v. Paño*, G. R. No. 69803, October 8, 1985, 139 SCRA 132; *Quintero v. NBI*, supra, note 270; *Silva v. Regional Trial Court of Negros Oriental*, supra, note 272.
- [292] *Bache v. Ruiz*, No. L-32409, February 27, 1971, 37 SCRA 823.
- [293] *People v. Rubio*, 57 Phil. 384 [1932].
- [294] *People v. Rubio*, supra, 293.
- [295] *Alvarez v. Court of First Instance of Tayabas*, supra, 272.
- [296] *Alvarez v. CFI*, supra, note 272.
- [297] *Stonehill v. Diokno*, supra, note 279.
- [298] *People v. Rubio*, supra, note 293.
- [299] *Ibid.*, dissent of J. Abad Santos.
- [300] Rules of Court, Rule 126, Sec. 2.
- [301] *Bache v. Ruiz*, supra, note 292; *Columbia Pictures v. Court of Appeals*, G. R. No. 111267, September 20, 1996, 262 SCRA 219.
- [302] *People v. Court of Appeals*, G. R. No. 126379, June 26, 1998, 291 SCRA 400.
- [303] *Steele vs. U.S.* [1925], U.S. Supreme Court Advance Opinions, 1924-1925; 69 Law. ed., 757.
- [304] *People v. Veloso*, 48 Phil. 169 [1925].
- [305] *Burgos v. Chief of Staff, Armed Forces of the Philippines*, supra, note 272.
- [306] *People v. Court of Appeals*, supra, note 302.
- [307] Rep. Act No. 8249, Sec. 4
- [308] Rules of Court, Rule 44, Sec. 7.
- [309] *Ibid*, Sec. 8.

[310] Ibid., Sec. 5.

[311] Rules of Court, Rule 44, Sec. 9.

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