

RE: PROPOSED RULE ON PROVISIONAL ORDERS

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RESOLUTION Acting on the letter of the Chairman of the Committee on Revision of the Rules of Court submitting for this Court's consideration and approval the Proposed Rule on Provisional Orders, the Court Resolved to APPROVE the same. The Rule shall take effect on March 15, 2003 following its publication in a newspaper of general circulation not later than March 7, 2003. March 4, 2003. Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio Morales, Callejo, Sr., and Azcuna, JJ., concur. Ynares-Santiago, J., on leave. Corona, J., on official leave. RULE ON PROVISIONAL ORDERS SECTION 1. When Issued.—Upon receipt of a verified petition for declaration of absolute nullity of void marriage or for annulment of voidable marriage, or for legal separation, and at any time during the proceeding, the court, motu proprio or upon application under oath of any of the parties, guardian or designated custodian, may issue provisional orders and protection orders with or without a hearing. These orders may be enforced immediately, with or without a bond, and for such period and under such terms and conditions as the court may deem necessary. Sec. 2. Spousal Support.—In determining support for the spouses, the court may be guided by the following rules: (a) In the absence of adequate provisions in a written agreement between the spouses, the spouses may be supported from the properties of the absolute community or the conjugal partnership. (b) The court may award support to either spouse in such amount and for such period of time as the court may deem just and reasonable based on their standard of living during the marriage. (c) The court may likewise consider the following factors: (1) whether the spouse seeking support is the custodian of a child whose circumstances make it appropriate for that spouse not to seek outside employment; (2) the time necessary to acquire sufficient education and training to enable the spouse seeking support to find appropriate employment, and that spouse's future earning capacity; (3) the duration of the marriage; (4) the comparative financial resources of the spouses, including their comparative earning abilities in the labor market; (5) the needs and obligations of each spouse; (6) the contribution of each spouse to the marriage, including services rendered in home-making, child care, education, and career building of the other spouse; (7) the age and health of the spouses; (8) the physical and emotional conditions of the spouses; (9) the ability of the supporting spouse to give support, taking into account that spouse's earning capacity, earned and unearned income, assets, and standard of living; and (10) any other factor the court may deem just and equitable. (d) The Family Court may direct the deduction of the provisional support from the salary of the spouse. Sec. 3. Child Support.—The common children of the spouses shall be supported from the properties of the absolute community or the conjugal partnership. Subject to the sound discretion of the court, either parent or both may be ordered to give an amount necessary for the support, maintenance, and education of the child. It shall be in proportion to the resources or means of the giver and to the necessities of the recipient. In determining the amount of provisional support, the court may likewise consider the following factors: (1) the financial resources of the custodial and non-custodial parent and those of the child; (2) the physical and emotional health of the child and his or her special needs and aptitudes; (3) the standard of living the child has been accustomed to; (4) the non-monetary contributions that the parents will make toward the care and well-being of the child, The Family Court may direct the deduction of the provisional support from the salary of the parent. Sec. 4. Child Custody.—In determining the right party or person to whom the custody of the child of the parties may be awarded pending the petition, the court shall consider the best interests of the child and shall give paramount consideration to the material and moral welfare of the child, The court may likewise consider the

following factors: (a) the agreement of the parties; (b) the desire and ability of each parent to foster an open, loving relationship between the child and the other parent; (c) the child's health, safety, and welfare; (d) any history of child or spousal abuse by the person seeking custody or who has had any filial relationship with the child, including anyone courting the parent; (e) the nature and frequency of contact with both parents; (f) habitual use of alcohol or regulated substances; (g) marital misconduct; (h) the most suitable physical, emotional, spiritual, psychological and educational environment; and (i) the preference of the child, if over seven years of age and of sufficient discernment, unless the parent chosen is unfit. The court may award provisional custody in the following order of preference: (1) to both parents jointly; (2) to either parent taking into account all relevant considerations under the foregoing paragraph, especially the choice of the child over seven years of age, unless the parent chosen is unfit; (3) to the surviving grandparent, or if there are several of them, to the grandparent chosen by the child over seven years of age and of sufficient discernment, unless the grandparent is unfit or disqualified; (4) to the eldest brother or sister over twenty-one years of age, unless he or she is unfit or disqualified; (5) to the child's actual custodian over twenty-one years of age, unless unfit or disqualified; or (6) to any other person deemed by the court suitable to provide proper care and guidance for the child. The custodian temporarily designated by the court shall give the court and the parents five days notice of any plan to change the residence of the child or take him out of his residence for more than three days provided it does not prejudice the visitation rights of the parents.

Sec. 5. Visitation Rights.—Appropriate visitation rights shall be provided to the parent who is not awarded provisional custody unless found unfit or disqualified by the court.

Sec. 6. Hold Departure Order.—Pending resolution of the petition, no child of the parties shall be brought out of the country without prior order from the court. The court, *motu proprio* or upon application under oath, may issue *ex-parte* a hold departure order, addressed to the Bureau of Immigration and Deportation, directing it not to allow the departure of the child from the Philippines without the permission of the court. The Family Court issuing the hold departure order shall furnish the Department of Foreign Affairs and the Bureau of Immigration and Deportation of the Department of Justice a copy of the hold departure order issued within twenty-four hours from the time of its issuance and through the fastest available means of transmittal. The hold-departure order shall contain the following information:

- (a) the complete name (including the middle name), the date and place of birth, and the place of last residence of the person against whom a hold-departure order has been issued or whose departure from the country has been enjoined;
- (b) the complete title and docket number of the case in which the hold departure was issued;
- (c) the specific nature of the case; and
- (d) the date of the hold-departure order,

If available, a recent photograph of the person against whom a hold-departure order has been issued or whose departure from the country has been enjoined should also be included. The court may recall the order, *motu proprio* or upon verified motion of any of the parties after summary hearing, subject to such terms and conditions as may be necessary for the best interests of the child.

Sec. 7. Order of Protection.—The court may issue an Order of Protection requiring any person: (a) to stay away from the home, school, business, or place of employment of the child, other parent or any other party, and to stay away from any other specific place designated by the court; (b) to refrain from harassing, intimidating, or threatening such child or the other parent or any person to whom custody of the child is awarded; (c) to refrain from acts of commission or omission that create an unreasonable risk to the health, safety, or welfare of the child; (d) to permit a parent, or a person entitled to visitation by a court order or a separation agreement, to visit the child at stated periods; (e) to permit a designated party to enter the residence during a specified period of time in order to take personal belongings not contested in a proceeding pending with the Family Court; (f) to comply with such other orders as are necessary for the protection of the child.

Sec. 8. Administration of Common Property.—If a spouse without just cause abandons the other or fails to comply with his or her obligations to the family, the court may, upon application of the aggrieved party under oath, issue a provisional order appointing the applicant or a third person as receiver or sole administrator of the

common property subject to such precautionary conditions it may impose. The receiver or administrator may not dispose of or encumber any common property or specific separate property of either spouse without prior authority of the court. The provisional order issued by the court shall be registered in the proper Register of Deeds and annotated in all titles of properties subject of the receivership or administration. Sec. 9. Effectivity.—This Rule shall take effect on March 15, 2003 following its publication in a newspaper of general circulation not later than March 7, 2003.

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