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6. 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.

2. 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.

3. 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:

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

- (1) delay resulting from an examination of the physical and mental condition of the accused;
- (2) delay resulting from proceedings with respect to other criminal charges against the accused;
- (3) delay resulting from extraordinary remedies against interlocutory orders;
- (4) delay resulting from pre-trial proceedings; Provided, that the delay does not exceed thirty (30) days;
- (5) delay resulting from orders of inhibition, or proceedings relating to change of venue of cases or transfer from other courts;
- (6) delay resulting from a finding of the existence of a 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.

4. 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 rule²⁰⁶ 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 rule²⁰⁷ 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.

5. 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 rule²⁰⁸ 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.

6. 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

7. 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

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.

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