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CIVIL PROCEDURE**PART ONE****ORDINARY CIVIL ACTIONS****I. CASE BEGINS WITH THE FILING OF COMPLAINT****1. Preliminary****1. Definition of complaint**

A complaint is a pleading alleging a plaintiff's cause or causes of action. The names and residences of the plaintiff and defendant must be stated in the complaint.¹

2. Requirements**2.1 Verification**

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records. A pleading required to be verified which contains a verification based on "information and belief" or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading.² Absence of verification when required is not a jurisdictional defect. It is just a formal defect which can be waived.³ The verification by a lawyer is sufficient.⁴

2.2 Certificate against forum-shopping

An important component of a complaint or any initiatory pleading is the certificate of non-forum shopping. The rule requires that the plaintiff or principal party certifies under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith:

(a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein;

(b) if there is such other pending action or claim, a complete statement of the present status thereof; and

(c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.⁵

2.2.1 Nature

(a) The required certificate of non-forum shopping is mandatory but not jurisdictional.⁶

(b) Initiatory pleadings are the complaint, permissive counterclaim, cross-claim, third-party (fourth-party, etc.), complaints and complaints-in-intervention. The certificate of non-forum shopping should be signed by the plaintiff (permissive counterclaimant, cross-claimant, third-party, etc. – plaintiff and plaintiff-in-intervention) and not the counsel.⁷

(c) There is forum shopping when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in other fora, or when he repetitively avails himself of "several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same issue or transactions involving the same essential facts and circumstances, and all raising substantially the same issues either pending in or resolved adversely by some other court."⁸ Elsewise stated, forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the other.⁹ Where judgment has already become final and executory, *res judicata* and not forum shopping should be pleaded as a defense. Forum shopping applies only when two (2) or more cases are still pending.¹⁰

(d) Failure to comply with the requirement of a certificate of non-forum shopping may not be cured by mere amendment of the complaint or other initiatory pleading. The initiatory pleading should be dismissed without prejudice, unless otherwise provided, upon motion and after hearing. However, even if there is a certificate of non-forum shopping, if the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice of the initiatory pleading and shall constitute direct contempt, as well as a cause for administrative sanctions against the former.¹¹

2. Filing of Complaint

1. Manner

Filing of the complaint is the act of presenting it to the Clerk of Court.¹² This may be done by presenting the original copy plainly indicated as such, personally to the clerk of court or by sending it by registered mail to the clerk of court. In personal filing, the date and hour of receipt by the clerk of court as indicated on the face of the complaint is the date and hour of filing. In filing by registered mail, the date of posting appearing on the envelope shall be considered the date of filing.¹³

Filing of a complaint by mail other than through registry service of the government postal agency is not authorized. Thus, if a complaint is mailed through any private letter-forwarding agency, the date of receipt by the clerk of court is the date of filing.¹⁴

Filing of the complaint should be distinguished from service of pleadings subsequent to the filing of the complaint.¹⁵ In service of pleadings, priorities in modes of service must be strictly observed.¹⁶

2. Payment of docket and other lawful fees

Ballatan v. Court of Appeals,¹⁷ summarizes the rules on payment of docket fees:

(a) The rule in this jurisdiction is that when an action is filed in court, the complaint must be accompanied by the payment of the requisite docket and filing fees.

(b) In real actions, the docket and filing fees are based on the value of the property and the amount of damages claimed, if any, which must be specified in the body and prayer of the complaint. Note that in *Tacay v. RTC of Tagum Davao del Norte*, the Supreme Court opined that a real action may be commenced or prosecuted without

an accompanying claim for damages.¹⁸

(c) If the complaint is filed but the fees are not paid at the time of filing, the court acquires jurisdiction upon full payment of the fees within a reasonable time as the court may grant, barring prescription.

(d) Where the fees prescribed for the real action have been paid but the fees of certain related damages are not, the court, although having jurisdiction over the real action, may not have acquired jurisdiction over the accompanying claim for damages.¹⁹

(e) Accordingly, the court may expunge those claims for damages, or allow, on motion, a reasonable time for amendment of complaint so as to allege the precise amount of damages and accept payment of the requisite legal fees.²⁰

(f) If there are unspecified claims, the determination of which may arise after the filing of the complaint or similar pleading, the additional filing fee thereon shall constitute a lien on the judgment award. ²¹

(g) The same rule also applies to third-party claims and other similar pleadings.²²

Note: Even if the value of a property is immaterial in the determination of the court's jurisdiction, it should however be considered in the determination of the amount of docket fee.²³

1 Rules of Court, Rule 6, Sec. 3.

2 Rules of Court, Rule 7, Sec. 4, as amended by A. M. No. 002-10-SC.

3 Philippine Bank of Commerce v. Macadaeg, 109 Phil. 981 [1960]; Buenaventura v. Uy, No. L-28156, March 31, 1987, 149 SCRA 22.

4 Uy v. Workmen's Compensation Commission, L-43389, April 28, 1980, 97 SCRA 255.

5 Rules of Court, Rule 7, Sec. 5.

6 Robern Development Corp. v. Quitain, G.R. No. 135042, September 23, 1999, 315 SCRA 150.

7 Five-Star Bus Company v. Court of Appeals, G.R. No. 127064, August 31, 1999, 313 SCRA 367.

8 Spouses Diu v. Ibajan, G. R. No. 132657, January 19, 2000.

9 Buan v. Lopez, No. L-75349, October 13, 1985, 145 SCRA 34.

10 Employees Compensation Commission v. Court of Appeals, G.R. No. 115858, June 26, 1996, 257 SCRA 717.

11 Rules of Court, Rule 7, Sec. 5.

12 Rules of Court, Rule 13, Sec. 2.

13 Ibid., Sec. 3.

14 Benguet Electric Cooperative, Inc v. National Labor Relations Commission, G. R. No. 89070, May 18, 1992, 209 SCRA 55.

15 Rules of Court, Rule 13, Sec. 4.

16 Ibid., Sec. 11.

17 G. R. No. 125683, March 2, 1999 304 SCRA 34.

18 Tacay v. Regional Trial Court of Tagum, G. R. Nos. 88075-77, December 20, 1989, 180 SCRA 483.

19 Original Development and Construction Corporation v. Court of Appeals, G. R. No. 94677, October 15, 1991, 202 SCRA 753.

20 Ibid.

21 Ibid.

22 Sun Insurance Office Ltd. v. Asuncion, G. R. Nos. 79937-38, February 13, 1989, 170 SCRA 274.

23 Tacay v. Regional Trial Court of Tagum, *supra*, note 18.

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