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5. PRE-TRIAL

1. Concept of Pre-Trial

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Pre-trial is a procedural device by which the Court is called upon after the filing of the last pleading, to compel the parties and their lawyers to appear before it, and negotiate an amicable settlement or otherwise make a formal statement and embody in a single document the issues of fact and law involved in the action, and such other matters as may aid in the prompt disposition of the action, such as the number of witnesses the parties intend to present, the tenor or character of their testimonies, their documentary evidence, the nature and purpose of each of them, and the number of trial dates that each will need to put on his case. One of the objectives of pre-trial procedure is to take the trial of cases out of the realm of surprise and maneuvering.¹⁴⁵ Pre-trial also lays down the foundation and structural framework of another concept, that is the continuous trial system.¹⁴⁶

Pre-trial is mandatory but not jurisdictional.¹⁴⁷

2. Purpose of Pre-Trial

The purpose of the pre-trial is for the court to consider:

- (a) the possibility of an amicable settlement or of a submission to alternative modes of dispute resolution;
- (b) the simplification of the issues;
- (c) the necessity or desirability of amendments to the pleadings;
- (d) the possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;
- (e) the limitation of the number of witnesses;
- (f) the advisability of a preliminary reference of issues to a commissioner;
- (g) the propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefore be found to exist.
- (h) the advisability or necessity of suspending the proceedings; and
- (i) such other matters as may aid in the prompt disposition of the action.¹⁴⁸

3. Administrative Circular No. 3-99 (January 15, 1999) on Pre-Trial

A. Pre-Trial

1. Within five (5) days after the last pleading joining the issues has been filed and served, the plaintiff must move ex parte that the case be set for pre-trial conference.
2. The parties shall submit, at least three (3) days before the conference, pre-trial briefs containing the following:
 - a. A statement of their willingness to enter into an amicable settlement indicating the desired terms thereof, or to submit the case to any of the alternative modes of dispute resolution;
 - b. A summary of admitted facts and proposed stipulation of facts;
 - c. The issues to be tried or resolved;
 - d. The number and names of the witnesses to be presented, and abstract of their testimonies, and the approximate number of hours that will be required by the parties for the presentation of their respective evidence;
 - e. Copies of all documents intended to be presented with a statement of the purposes of their offer;
 - f. A manifestation of their having availed or their intention to avail themselves of any discovery procedure, or of the need of referral of any issues to commissioners;
 - g. Applicable laws and jurisprudence;
 - h. The available trial dates of counsel for complete presentation of evidence, which must be within a period of three months from the first day of trial.
3. Before the pre-trial conference, the judge must study the pleadings of every case, and determine the issues thereof and the respective positions of the parties thereon to enable him to intelligently steer the parties toward a possible amicable settlement of the case, or, at the very least, to help reduce and limit the issues.

The judge should avoid the undesirable practice of terminating the pre-trial as soon as the parties have indicated that they cannot settle the controversy. He must be mindful that there are other important aspects of the pre-trial that ought to be taken up to expedite the disposition of the case.

4. At the pre-trial conference, the following shall be done:
 - a. The judge with all tact, patience and impartiality shall endeavor to persuade the parties to arrive at a settlement of the dispute; if no amicable settlement is reached, then he must effectively direct the parties toward the achievement of the other objectives or goals of pre-trial set forth in Section 2, Rule 18, 1997 Rules of Civil Procedure.
 - b. If warranted by the disclosures at the pre-trial, the judge may either forthwith dismiss the action, or determine the propriety of rendering a judgment on the pleadings or a summary judgment.
 - c. The judge shall define the factual issues arising from the pleadings and endeavor to cull the material issues.
 - d. If only legal issues are presented, the judge shall require the parties to submit their respective memoranda and thereafter render judgment.
 - e. If trial is necessary, the judge shall fix the trial dates required to complete presentation of evidence by both parties within ninety (90) days from the date of initial hearing.
5. After the pre-trial conference, the judge should not fail to prepare and issue the requisite pre-trial order, which shall embody the matters mentioned in Section 7, Rule 18 of the 1997 Rules of Civil Procedure.
6. Failure of the plaintiff to appear at the pre-trial shall be a cause for dismissal of the action. A similar failure of

the defendant shall be a cause to allow the plaintiff to present his evidence ex-parte and the court to render judgment on the basis thereof.

7. Failure to file pre-trial briefs shall have the same effect as failure to appear at the pre-trial.

The judge should encourage the effective use of pre-trial discovery procedures.¹⁴⁹

4. The Pre-Trial Order

Where the case proceeded to trial with the petitioners actively participating therein without raising their objections to the pre-trial, they are bound by the stipulations at the pre-trial.¹⁵⁰

Pre-trial is primarily intended to make certain that all issues necessary to the disposition of a case are properly raised, and the determination of issues at a pre-trial conference bars the consideration of other questions on appeal.¹⁵¹

4.1 Exceptions

4.1.1 To prevent manifest injustice;¹⁵²

4.1.2 Issues that are impliedly included or necessarily connected to the expressly defined issues and denser parts of the pre-trial order.¹⁵³

4.1.3 Issues not included in the pre-trial order but were tried expressly or impliedly by the parties.¹⁵⁴

¹⁴⁵ Permanent Concrete Products, Inc. v. Teodoro, G. R. No. 29776, November 29, 1968, 26 SCRA 332.

¹⁴⁶ Circular No. 1-89; Administrative Circular No. 4, September 4, 1988.

¹⁴⁷ Martinez v. de la Merced, G. R. No. 82309, June 20, 1989, 174 SCRA 182.

¹⁴⁸ Rules of Court, Rule 18, Sec. 2.

¹⁴⁹ Administrative Circular No. 1 dated 28 January 1988.

¹⁵⁰ Macaraeg v. Court of Appeals, G. R. No. 48008, January 20, 1989, 169 SCRA 259 citing Lucenta v. Court of First Instance of Bukidnon, G. R. No. L-39789, June 20, 1988, 162 SCRA 197.

¹⁵¹ Son v. Son, G. R. No. 73077, December 29, 1996, 251 SCRA 556.

¹⁵² Sese v. Intermediate Appellate Court, No. L-66186, July 31, 1987, 152 SCRA 585.

¹⁵³ Velasco v. Apostol, G. R. No. 44588, May 9, 1989, 173 SCRA 228 cited in Son v. Son, supra, note 151.

¹⁵⁴ Son v. Son, supra, note 151.

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