Civil Procedure 2019 Revisions

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I. INTRODUCTION

This Article is a comparison of what appear to be the most significant changes to the Rules on Civil Procedure, focusing on the concepts that would affect practitioners and litigants alike. This Article is not intended to be a comprehensive discussion of all the rules; rather, it seeks to highlight possible gray areas or points of dispute, as well as areas where most adjustments are needed.

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The main thrust of the 2019 Amendments to the Rules on Civil Procedure ("2019 Rules" or "Amendments") is clearly to expedite what is perceived as the glacial litigation pace in the country.[1] It is undeniable that most cases take years — if not decades — to litigate to their final outcome.[2] Any effort to eliminate sources of delay is laudable. However, as in most processes that involve decades of ingrained practices, the implementation of change is often as challenging as conceptualizing them.

II. RULE 6: PLEADINGS

A pleading is well-known to practitioners and litigants alike as including generally any and all documents filed in the course of a litigation.[3] Justice Florenz D. Regalado says as much and, citing jurisprudence, explains that even documents attached to pleadings and made part thereof are considered part of the pleading.[4]

Indeed, Section 1, Rule 6 of the Rules of Court defines a pleading as "written statements of the respective claims and defenses of the parties submitted to the court for appropriate judgment."[5]

Not all documents filed in court, however, can be considered as pleadings. Section 2, Rule 6 defines the only pleadings allowed in a litigation, thus —

> Section 2. *Pleadings allowed.* — The claims of a party are asserted in a complaint, counterclaim, cross-claim, third (fourth, etc.)-party complaint, or complaint-in-intervention.
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> The defenses of a party are alleged in the answer to the pleading asserting a claim against him *or her.*
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> An answer may be responded to by a reply *only if the defending party attaches an actionable document to the answer.*[6]

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1. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, whereas cl. para. 2.
2. *See* Judiciary Annual Report 2019, at 8-13, *available at* https://sc.judiciary.gov.ph/files/annual-reports/JAR-2019.pdf (last accessed July 31, 2021) [https://perma.cc/9K3Z-76RP].
3. *See* 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 6, § 1.
4. FLORENZ D. REGALADO, REMEDIAL LAW COMPENDIUM 125 (6th revised ed. 1997) (citing Asia Banking Corporation v. Walter E. Olsen & Co., 48 Phil. 529, 532 (1925)).
5. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 6, § 1.
6. *Id.* rule 6, § 2.

It must also be noted that a motion is strictly not a pleading, as Section 1, Rule 15 states that "[a] motion is an application for relief other than by a pleading."[7] This is not an empty distinction, as the filing of a responsive pleading — and not a motion — has practical significance. For instance, in the rule on amendments, a pleading may be amended without leave of court if no responsive pleading is filed.[8] To further illustrate, in case what was filed was a Motion to Dismiss, the plaintiff can still amend his complaint by right to address the defects pointed out in the Motion to Dismiss.[9]

The list of pleadings in Rule 6 is mainly a repetition of the previous rule,[10] but with significant change to the restrictions on the filing of a Reply and the addition of a Rejoinder.[11] It will be recalled that under the previous rule, a Reply was an optional filing,[12] which may even be viewed as a redundancy or, worse, as dilatory. The old rule stated —

> Section 10. *Reply*. — A reply is a pleading, the office or function of which is to deny, or allege facts in denial or avoidance of new matters alleged by way of defense in the answer and thereby join or make issue as to such new matters. If a party does not file such reply, all the new matters alleged in the answer are deemed controverted.
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> If the plaintiff wishes to interpose any claims arising out of the new matters so alleged, such claims shall be set forth in an amended or supplemental complaint.[13]

Indeed, with or without the Reply, the issues are already joined, as the Reply is not meant to — and, in fact, is even prohibited from — raising new matters or new causes of action.[14] This is the reason why the second paragraph above articulates what can be said to be an obvious rule that if new matters

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7. *Id.* rule 15, § 1.
8. *Id.* rule 10, § 2.
9. Bautista v. Maya-Maya Cottages, Inc., G.R. No. 148361, 476 SCRA 416, 419 (2005).
10. *Compare* 1997 RULES OF CIVIL PROCEDURE, rule 6, *with* 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 6.
11. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 6, §§ 2 & 10.
12. 1997 RULES OF CIVIL PROCEDURE, rule 6, §§ 2 & 10 (superseded in 2019).
13. *Id.* rule 6, § 10.
14. Magnolia Corporation v. National Labor Relations Commission, G.R. No. 116813, 250 SCRA 332, 341 (1995) (citing 1 RUPERTO G. MARTIN, RULES OF COURT IN THE PHILIPPINES WITH NOTES AND COMMENTS 301-02 (1989)).

are to be raised, the plaintiff must utilize other remedies to do so — such as an amendment or supplement — and obviously comply with the requirements to modify the previously filed pleadings.[15]

The current rule simplifies the procedure, viz. —

> Section 10. *Reply. — All new matters alleged in the answer are deemed controverted. If the plaintiff wishes to interpose any claims arising out of the new matters so alleged, such claims shall be set forth in an amended or supplemental complaint. However, the plaintiff may file a reply only if the defending party attaches an actionable document to his or her answer.*
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> A reply is a pleading, the office or function of which is to deny, or allege facts in denial or avoidance of new matters alleged *in, or relating to, said actionable document*.
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> *In the event of an actionable document attached to the reply, the defendant may file a rejoinder if the same is based solely on an actionable document.*[16]

Previously, there was uncertainty on whether there was still a need to file a Reply in case an actionable document was attached to the Answer.[17] On the one hand, it could be argued that even without a Reply, there is an automatic refutation of the matters contained in the Answer.[18] Therefore, a Reply meant to refute an actionable document in the Answer would be unnecessary. On the other hand, the rule on how to contest an actionable document stated in Rule 8 of the Rules of Court requires a specific denial under oath of an actionable document, regardless of whether it was attached to the Complaint or Answer.[19]

Early on, Justice Regalado espoused his view on the matter —

> As then formulated, it was believed that in the following instances, the filing of the reply was compulsory and must be filed within the said 10-day period:
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> ...

15. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 6, § 10.

16. *Id.*

17. *See* 1997 RULES OF CIVIL PROCEDURE, rule 6, §§ 2 & 10 (superseded in 2019).

18. *Id.* rule 6, §§ 4-5.

19. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 8, § 8.

> (b) Where the answer is based on an actionable document in which case a verified reply is necessary otherwise the genuineness and due execution of said actionable document are generally deemed admitted.[20]

Several years later, the Supreme Court had the occasion to squarely rule on this issue. In *Casent Realty Development Corp. v. Philbanking Corporation*,[21] the Supreme Court ruled that "where the defense in the Answer is based on an actionable document, a Reply specifically denying it under oath must be made; otherwise, the genuineness and due execution of the [actionable] document will be deemed admitted."[22] In this case, since the respondent failed to specifically deny the genuineness and due execution of the *Dacion* and Confirmation Statement under oath by failing to file a Reply to the Answer of the petitioner, the genuineness and due execution of the *Dacion* and Confirmation Statement were deemed admitted.[23] The amended Rule has now codified the ruling in *Casent Realty*.

Rule 6 also describes the usual contents of the pleadings, thus, "[t]he complaint is the pleading alleging the plaintiff's *or claiming party's* cause or causes of action. The names and residences of the plaintiff and defendant must be stated in the complaint."[24]

The Complaint takes on a special significance because the averments in the Complaint determine the subject matter jurisdiction.[25] Thus, for instance, if the Complaint alleges monetary damage in the amount of ₱3,000,000 and the defendant in his Answer admits liability in the amount of ₱1,500,000 and leaves only ₱1,500,000 contested, the Regional Trial Court still retains

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20. REGALADO, *supra* note 4, at 133-34 (citing 1997 RULES OF CIVIL PROCEDURE, rule 8, § 8).

21. Casent Realty Development Corp. v. Philbanking Corporation, G.R. No. 150731, 533 SCRA 390 (2007).

22. *Id.* at 399 (citing Toribio v. Bidin, G.R. No. L-57821, 134 SCRA 162, 170 (1985)).

23. *Id.*

24. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 6, § 3.

25. Penta Pacific Realty Corporation v. Ley Construction and Development Corporation, G.R. No. 161589, 741 SCRA 426, 430 (2014). "Jurisdiction over the subject matter of an action is determined from the allegations of the initiatory pleading." *Id.*

jurisdiction because it is the original allegation of ₱3,000,000 that determines jurisdiction.[26]

The formulation of the allegations in the Complaint is also critical, as it must contain a proper cause of action not only by the plaintiff, but of any party seeking relief — hence the addition of the phrase "claiming party" in the 2019 Amendments.[27] Thus, counterclaims, cross-claims, and third-party complaints are also considered complaints unto themselves and must sufficiently state a cause of action against the opposing party.[28]

> Section 4. *Answer.* — An answer is a pleading in which a defending party sets forth his *or her* defenses.
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> Section 5. *Defenses.* — Defenses may either be negative or affirmative.
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> (a) A negative defense is the specific denial of the material fact or facts alleged in the pleading of the claimant essential to his *or her* cause or causes of action.
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> (b) An affirmative defense is an allegation of a new matter which, while hypothetically admitting the material allegations in the pleading of the claimant, would nevertheless prevent or bar recovery by him *or her.* The affirmative defenses include fraud, statute of limitations, release, payment, illegality, statute of frauds, estoppel, former recovery, discharge in bankruptcy, and any other matter by way of confession and avoidance.
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> *Affirmative defenses may also include grounds for the dismissal of a complaint, specifically, that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment.*[29]

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26. *See Penta Pacific Realty Corporation*, 741 SCRA at 440 & An Act Further Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts in Cities, 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," as Amended, Republic Act No. 11576 (2021).

27. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 6, § 3.

28. *See* Zuñiga-Santos v. Santos-Gran, G.R. No. 197380, 738 SCRA 33, 41-42 (2014). "A complaint states a cause of action if it sufficiently avers the existence of the three (3) essential elements of a cause of action[.]" *Id.*

29. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 6, §§ 4-5.

Section 5 describes the kinds of defenses that may be raised.[30] A negative defense is a defense that specifically denies the material facts alleged in the complaint constituting the plaintiff's cause of action.[31] However, caution must be exercised in making a denial because of the mandate of Section 10 of Rule 8, which states —

> Section 10. *Specific denial*. — A defendant must specify each material allegation of fact the truth of which he *or she* does not admit and, whenever practicable, shall set forth the substance of the matters upon which he *or she* relies to support his *or her* denial. Where a defendant desires to deny only a part of an averment, he *or she* shall specify so much of it as is true and material and shall deny only the remainder. Where a defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made to the complaint, he *or she* shall so state, and this shall have the effect of a denial.[32]

So important is the manner of denial that a general denial is punished severely, as "[*m*]*aterial averments* in *a pleading asserting a claim or claims*, other than those as to the amount of unliquidated damages, shall be deemed admitted when not specifically denied."[33]

An affirmative defense, on the other hand, accepts the allegations in the complaint but alleges a *new matter* which would bar recovery by plaintiffs notwithstanding the hypothetical admission of the allegations in the complaint.[34] The following are considered as affirmative defenses:

(1) Fraud;[35]

(2) Statute of Limitations;[36]

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30. *Id.* rule 6, § 5.

31. *Id.* rule 6, § 5 (a).

32. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 8, § 10 (emphases supplied).

33. *Id.* rule 8, § 11 (emphasis supplied). The term "complaint" was replaced with the phrase "in a pleading asserting a claim or claims" because there could also be a material averment in the answer, a third-party complaint, or cross-claim. A counter-claim can also have unliquidated damages.

34. *Id.* rule 6, § 5.

35. *Id.*

36. *Id.*

(3) Release;[37]

(4) Payment;[38]

(5) Illegality;[39]

(6) Statute of Frauds;[40]

(7) Estoppel;[41]

(8) Former recovery;[42]

(9) Discharge in bankruptcy;[43] and

(10) Any other matter by way of confession and avoidance.[44]

Justice Regalado explains that the foregoing enumeration is not exclusive.[45] Citing jurisprudence, he explains that *res judicata*, *ultra vires* acts of a corporation, or lack of authority of a person assuming to act for the corporation, laches, and unconstitutionality can be raised as affirmative defenses.[46]

A new paragraph has been added to Section 5, Rule 6 stating that the following grounds to dismiss a complaint are included as affirmative defenses:

(1) "the court has no jurisdiction over the subject matter;"[47]

(2) "there is another action pending between the same parties for the same cause;"[48] or

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37. *Id.*

38. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 6, § 5.

39. *Id.* rule 6, § 5 (b).

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 6, § 5 (b).

45. REGALADO, *supra* note 4, at 127.

46. *Id.* (citing Fernandez v. De Castro, 48 Phil. 123, 129 (1925); Ramirez v. Orientalist Co and Fernandez, 38 Phil. 634, 644 (1918); Government of the P.I. v. Wagner and Cleland Wagner, 49 Phil. 944, 951 (1927); & Santiago v. Far Eastern Broadcasting, 73 Phil. 408, 412 (1941)).

47. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 6, § 5.

48. *Id.*

(3) "the action is barred by a prior judgment."[49]

As mentioned above, it is not only the plaintiff who may raise a cause of action, but a defendant may do so as well. In case it "arises out of or is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim,"[50] it is considered a compulsory counterclaim and *must* be brought in the same action; otherwise it is barred.[51] The amended rule now highlights this —

> Section 7. *Compulsory counterclaim*. — A compulsory counterclaim is one which, being cognizable by the regular courts of justice, arises out of or is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. Such a counterclaim must be within the jurisdiction of the court both as to the amount and the nature thereof, except that in an original action before the Regional Trial Court, the counterclaim may be considered compulsory regardless of the amount. *A compulsory counterclaim not raised in the same action is barred, unless otherwise allowed by these Rules.*[52]

The additional sentence on compulsory counterclaims formalizes the rule in *Financial Building Corporation v. Forbes Park Association, Inc.*,[53] where the Supreme Court explained that if a party files a motion to dismiss the complaint instead of setting up a compulsory counterclaim in an answer and the complaint is dismissed, he is barred from prosecuting such claim.[54]

As is evident from the Rule, if a compulsory counterclaim is not raised in the Answer, a party is barred from interposing such claim in a future litigation.[55] However, the said Rule does not apply *where the claim did not exist or mature at the time of the filing of the answer.*[56] Thus, in *Banco de Oro Universal*

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49. *Id.*

50. *Id.* rule 6, § 7.

51. *Id.*

52. *Id.*

53. Financial Building Corporation v. Forbes Park Association, Inc., G.R. No. 133119, 338 SCRA 346 (2000).

54. *Id.* at 354.

55. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 6, § 7.

56. Banco de Oro Universal Bank v. Court of Appeals, G.R. No. 160354, 468 SCRA 166, 185 (2005) (citing National Marketing Corporation v. Federation of United Namarco Distributors, Inc., G.R. No. L-22578 , 49 SCRA 238, 268-69 (1973)).

Bank v. Court of Appeals,[57] the Court allowed the filing of a separate action for recovery of deficiency payments from the debtor even if there was a previous action filed between the same debtor and creditor, because by the time the first complaint was filed, the debt had not yet fallen due, and the deficiency was yet unknown.[58] Hence, the creditor, which was the defendant in the first case, could not have raised the collection of the deficiency as a counterclaim.[59]

Also, if a complaint is dismissed on motion of or due to the fault of the plaintiff, such dismissal is without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action.[60] Interpreting Section 2 of Rule 17, the Court held that "the dismissal of the complaint due to the fault of [the] plaintiff does not necessarily carry with it the dismissal of the counterclaim, compulsory or otherwise. In fact, the dismissal of the complaint is without prejudice to the right of defendants to prosecute the counterclaim."[61]

Aside from the causes of action between the plaintiff and defendant, it is possible for the defendant to file his or her action against a third-party where he or she claims against said third-party a right to contribution, indemnity, or subrogation.[62]

The rule remains, but with an amendment in the second paragraph —

> Section 11. *Third, (fourth, etc.)-party complaint*. — A third (fourth, etc.)-party complaint is a claim that a defending party may, with leave of court, file against a person not a party to the action, called the third (fourth, etc.)-party defendant for contribution, indemnity, subrogation or any other relief, in respect of his *or her* opponent's claim.
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> *The third (fourth, etc.)-party complaint shall be denied admission, and the court shall require the defendant to institute a separate action, where: (a) the third (fourth, etc.)-party defendant cannot be located within thirty (30) calendar days from the grant of*

57. Banco de Oro Universal Bank v. Court of Appeals, G.R. No. 160354, 468 SCRA 166 (2005).

58. *Id.* at 184-85.

59. *Id.*

60. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 17, § 2.

61. Pinga v. Heirs of German Santiago, G.R. No. 170354, 494 SCRA 393, 401 (2006) & Corpuz v. Citibank, N.A., G.R. No. 175677, 594 SCRA 632, 638 (2009).

62. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 6, § 11.

> *such leave; (b) matters extraneous to the issue in the principal case are raised; or (c) the effect would be to introduce a new and separate controversy into the action.*[63]

A third-party complaint is a claim that a defending party may, with leave of court, file against a person not a party to the action — called the third-party defendant — "for contribution, indemnity, subrogation, or any other relief, in respect of his or her opponent's claim."[64] It is actually a complaint "independent of, [and] separate and distinct from[,] the plaintiff's complaint[.]"[65] In fact, were it not for Rule 6, Section 11 of the Rules of Court, such third-party complaint would have to be filed independently and separately from the original complaint by the defendant against the third-party defendant.[66]

Thus, for the court to allow a third-party complaint, "[t]here must be a *causal connection* between the *claim of the plaintiff* in his complaint and a *claim for contribution, indemnity*[,] *or other relief* of the defendant against the third-party defendant."[67]

Rule 6, Section 11, paragraph 2 now provides for the following specific grounds to deny admission of a third (fourth, etc.)-party complaint:

(1) "the third (fourth, etc.)-party defendant cannot be located within thirty (30) calendar days from the grant of [ ] leave [to file a third (fourth, etc.)-party complaint];"[68]

(2) "matters extraneous to the issue in the principal case are raised; or"[69]

(3) "the effect would be to introduce a new and separate controversy into the action."[70]

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63. *Id.*

64. *Id.*

65. Asian Construction and Development Corporation v. Court of Appeals, G.R. No. 160242, 458 SCRA 750, 759 (2005) (citing Allied Banking Corporation v. Court of Appeals, G.R. No. 85868, 178 SCRA 526, 531 (1989)).

66. *Id.*

67. *Asian Construction and Development Corporation*, 458 SCRA at 759 (emphases supplied).

68. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 6, § 11, para. 2.

69. *Id.*

70. *Id.*

The last two paragraphs codify jurisprudential grounds for the denial of a third-party complaint, as jurisprudence has already established the following tests to determine the propriety of a third-party complaint:

> (1) whether [the third-party claim] arises [from] the same transaction [subject of the complaint]; or whether the third-party claim, although arising out of another or different contract or transaction, is *connected* with the plaintiff's claim;
>
> (2) whether the third-party defendant would be liable to the plaintiff or to the defendant for all or part of the plaintiff's claim against the original defendant, although the third-party defendant's liability arises out of another transaction; and
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> (3) whether the third-party defendant may assert any defenses which the third-party plaintiff has or may have to the plaintiff's claim.[71]

The key addition, therefore, is the 30-day limit to locate the third-party defendant, which is now imposed in the provision.[72] This new ground for denial obviously puts a premium on the speed by which a case should be litigated, as the claim will still be denied even if it would have been a proper third-party complaint, simply because of delay in locating the new party.

III. RULES 7 AND 8: PLEADINGS

Not only must pleadings be crafted in a manner that show sufficiency in substance, but there are also formal requirements which are essential for their validity. They are explained in this Rule —

> Section 1. *Caption*. — The caption sets forth the name of the court, the title of the action, and the docket number if assigned.
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> The title of the action indicates the names of the parties. They shall all be named in the original complaint or petition; but in subsequent pleadings, it shall be sufficient if the name of the first party on each side be stated with an appropriate indication when there are other parties.
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> Their respective participation in the case shall be indicated.
>
> Section 2. *The body*. — The body of the pleading sets forth its designation, the allegations of the party's claims or defenses, the relief prayed for, and the date of the pleading.

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71. *Asian Construction and Development Corporation*, 458 SCRA at 759-60 (emphasis supplied).

72. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 6, § 11, para. 2.

(a) *Paragraphs*. — The allegations in the body of a pleading shall be divided into paragraphs so numbered to be readily identified, each of which shall contain a statement of a single set of circumstances so far as that can be done with convenience. A paragraph may be referred to by its number in all succeeding pleadings.

(b) *Headings*. — When two or more causes of action are joined, the statement of the first shall be prefaced by the words 'first cause of action,' of the second by 'second cause of action,' and so on for the others.

When one or more paragraphs in the answer are addressed to one of several causes of action in the complaint, they shall be prefaced by the words 'answer to the first cause of action' or 'answer to the second cause of action' and so on; and when one or more paragraphs of the answer are addressed to several causes of action, they shall be prefaced by words to that effect.

(c) *Relief*. — The pleading shall specify the relief sought, but it may add a general prayer for such further or other relief as may be deemed just or equitable.

(d) *Date*. — Every pleading shall be dated.

Section 3. *Signature and address*. — (a) Every pleading *and other written submissions* to the court must be signed by the party or counsel representing him *or her*.

(b) The signature of counsel constitutes a certificate by him *or her* that he *or she* has read the pleading *and document*; that to the best of his *or her* knowledge, information, and belief, *formed after an inquiry reasonable under the circumstances:*

(1) It is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) The claims, defenses, and other legal contentions are warranted by existing law or jurisprudence, or by a non-frivolous argument for extending, modifying, or reversing existing jurisprudence;

(3) The factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after availment of the modes of discovery under these rules; and

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) *If the court determines, on motion or motu proprio and after notice and hearing, that this rule has been violated, it may impose an appropriate sanction or refer such violation to the proper office for disciplinary action, on any attorney, law firm, or party that violated the rule, or is responsible for the violation. Absent exceptional circumstances, a law firm shall be held jointly and severally liable for a violation committed by its partner, associate, or employee. The sanction may include, but shall not be limited to, non-monetary directive or sanction; an order to pay a penalty in court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation, including attorney's fees for the filing of the motion for sanction. The lawyer or law firm cannot pass on the monetary penalty to the client.*

Section 4. *Verification.* — Except when otherwise specifically required by law or rule, pleadings need not be under oath or verified.

A pleading is verified by an affidavit of an affiant duly authorized to sign said verification. The authorization of the affiant to act on behalf of a party, whether in the form of a secretary's certificate or a special power of attorney, should be attached to the pleading, and shall allege the following attestations:

(1) The allegations in the pleading are true and correct based on his or her personal knowledge, or based on authentic documents;

(2) The pleading is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and

(3) The factual allegations therein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.

The signature of the affiant shall further serve as a certification of the truthfulness of the allegations in the pleading.

A pleading required to be verified *that* 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.

Section 5. *Certification against forum shopping.* — The plaintiff or principal party shall certify 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 or she 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 or her 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 or she should thereafter learn that the same or similar action or claim has been filed or is pending, he or she shall report that fact

> within five (5) *calendar* days therefrom to the court wherein his or her aforesaid complaint or initiatory pleading has been filed.
>
> *The authorization of the affiant to act on behalf of a party, whether in the form of a secretary's certificate or a special power of attorney, should be attached to the pleading.*
>
> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his or her counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.[73]

Previously, a pleading would already be considered sufficient in form when it contained the following:

(1) Caption, "setting forth the name of the court, the title of the action indicating the names of the parties, and the docket number[;]"[74]

(2) Body, "reflecting the designation, the allegations of the party's claims or defenses, the relief prayed for, and the date of the pleading;"[75]

(3) Signature and address "of the party or counsel;"[76]

(4) Verification for some pleadings — designed "to secure an assurance that the allegations have been made in good faith, or are true and correct and not merely speculative;"[77]

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73. *Id.* rule 7, §§ 1-5.

74. Munsalud v. National Housing Authority, G.R. No. 167181, 575 SCRA 144, 151 (2008).

75. *Id.*

76. *Id.* (citing 1997 RULES OF CIVIL PROCEDURE, rule 7, §§ 1-3).

77. *Munsalud*, 575 SCRA at 151 (citing Clavecilla v. Quitain, G.R. No. 147989, 482 SCRA 623, 631 (2006); Mamaril v. Civil Service Commission, G.R. No. 164929, 487 SCRA 65, 71-72 (2006); & Torres v. Specialized Packaging Development Corporation, G.R. No. 149634, 433 SCRA 455, 463-64 (2004)).

(5) Certificate of Non-forum Shopping for initiatory pleadings, "which although not jurisdictional, ... is obligatory;"[78]

(6) Explanation where "the pleading is not filed personally to the Court[ ]" and served personally to the parties for pleadings subsequent to the complaint;[79]

(7) Proof of service;[80]

(8) Roll of Attorney's Number;[81]

(9) Professional Tax Receipt Number;[82]

(10) IBP Official Receipt Number;[83] and

(11) MCLE Compliance Certificate Number and Date of Issue.[84]

One of the key innovations in the 2019 Amendments is in Rule 7, Section 6, and it is poised to reshape the manner of litigation altogether.[85] The Rule now requires the names of the witnesses and a summary of their intended testimonies to be stated in the pleadings and for the parties to already attach the judicial affidavits and state the documentary and object evidence in support of the allegations.[86] The Rule states —

78. *Munsalud*, 575 SCRA at 151 (citing *Torres*, 433 SCRA at 464-66).

79. *Munsalud*, 575 SCRA at 152 (citing 1997 RULES OF CIVIL PROCEDURE, rule 13, §§ 4 & 11).

80. *Munsalud*, 575 SCRA at 152 (citing 1997 RULES OF CIVIL PROCEDURE, rule 13, § 13).

81. *Munsalud*, 575 SCRA at 152.

82. *Id.*

83. *Id.* (citing Office of the Court Administrator, Requirement That All Lawyers Should Indicate in the Pleading Their Number in the Roll of Attorneys, OCA Circular No. 58-2003 (May 29, 2003)).

84. *Munsalud*, 575 SCRA at 152 (citing Supreme Court, Re: Recommendation of the Mandatory Continuing Legal Education (MCLE) Board to Indicate in All Pleadings Filed with the Courts the Counsel's MCLE Certificate of Compliance or Certificate of Exemption, Bar Matter No. 1922 [B.M. No. 1922] (Sept. 2, 2008)).

85. *See* Oscar Carlo F. Cajucom, et al., *Playing by the Rules: An Ethical Analysis of the 2019 Revised Rules of Civil Procedure*, 65 ATENEO L.J. 64, 69-70 (2020).

86. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 7, § 6.

> Section 6. *Contents. — Every pleading stating a party's claims or defenses shall, in addition to those mandated by Section 2, Rule 7, state the following:*
>
> (a) *Names of witnesses who will be presented to prove a party's claim or defense;*
>
> (b) *Summary of the witnesses' intended testimonies, provided that the judicial affidavits of said witnesses shall be attached to the pleading and form an integral part thereof. Only witnesses whose judicial affidavits are attached to the pleading shall be presented by the parties during trial. Except if a party presents meritorious reasons as basis for the admission of additional witnesses, no other witness or affidavit shall be heard or admitted by the court; and*
>
> (c) *Documentary and object evidence in support of the allegations contained in the pleading.*[87]

It must also be noted that Rule 8, Section 1 now states —

> Every pleading shall contain in a methodical and logical form, a plain, concise and[,] direct statement of the ultimate facts, *including the evidence* on which the party pleading relies for his or her claim or defense, as the case may be.
>
> If a *cause of action* or defense relied on is based on law, the pertinent provisions thereof and their applicability to him *or her* shall be clearly and concisely stated.[88]

It is now required that the evidence on which the party pleading relies for his or her claim or defense be stated in the pleading.[89]

These two Rules therefore require all parties to already include their evidence as early as the pleading phase of the litigation. This is a departure from previous practice where only ultimate facts — *essential and substantial facts* — which form the basis of the primary right and duty, or which directly make up the wrongful acts or omissions of the defendant, are required in pleadings.[90]

Landmark decisions, such as *Far East Marble (Phils.), Inc. v. Court of Appeals*,[91] previously explained that "[a] complaint is sufficient if it contains

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87. *Id.*

88. *Id.* rule 8, § 1.

89. *Id.*

90. Marcelo v. Sandiganbayan, G.R. No. 156605, 531 SCRA 385, 403 (2007) (citing Remitere, et al. v. Vda. de Yulo, et al., G.R. No. L-19751, 16 SCRA 251, 255 (1966)).

91. Far East Marble (Phils.), Inc. v. Court of Appeals, G.R. No. 94093, 225 SCRA 249 (1993).

sufficient notice of the cause of action even though ... vague or indefinite, for in such case, the [proper] recourse ... would be to file a motion for a bill of particulars[.]"[92] In that case, the Court said that "the general allegation of BPI that 'despite repeated requests and demands for payment, Far East has failed to pay' is sufficient to establish [its] cause of action."[93] It is submitted that under the present Rule, the plaintiff would have to substantiate his or her claims in more detail, such as by explaining the circumstances by which loans were incurred, who negotiated them, what were the basis for the terms agreed upon, and the details of the efforts to collect. Additionally, the statements of the witnesses would have to be attached to the complaint, already identifying the documentary and, possibly, object evidence they will be presenting come trial proper.[94]

The same rule applies to a defendant filing an Answer. It will be recalled that the defendant has to specifically deny the allegation and, whenever practicable, state the allegations supporting the denial, or specify a part of the allegation that is true and deny the remainder thereof, or state that he is without knowledge or information sufficient to form a belief as to the truth of the allegation; this remains to be the rule under Rule 8, Section 10.[95] However, considering that Rule 7, Section 6 is applied to *all* pleadings filed,[96] and not just to the Complaint, the Answer must now also state, among others, the summary of the witnesses' intended testimonies and attach the judicial affidavits of said witnesses, as well as the documentary and object evidence in support of the allegations contained in the pleading.[97]

Aside from the key amendment discussed above, some technical requirements have also been modified.

A. Signature of Counsel

Under the old Rules, the signature of counsel was an assurance by him that he has:

92. *Id.* at 258 (citing Ramos v. Condez, G.R. No. L-22072, 20 SCRA 1146, 1150 (1967)).

93. *Far East Marble (Phils.), Inc.*, 225 SCRA at 258.

94. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 7, § 6.

95. *Id.* rule 8, § 10.

96. *Id.* rule 7, § 6.

97. *Id.*

(1) "read the pleading;"[98]

(2) "to the best of his knowledge, information, and belief there is good ground to support it;"[99] and,

(3) "that it is not interposed for delay."[100]

However, the new Rule 7, Section 3 (b) and its subsections now state that "[t]he signature of counsel constitutes a certificate by him *or her* that he or she has read the pleading and document[ ]"[101] and "that to the best of his *or her* knowledge, information, and belief, *formed after an inquiry reasonable under the circumstances*:"[102]

(1) It is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) The claims, defenses, and other legal contentions are warranted by existing law or jurisprudence, or by a non-frivolous argument for extending, modifying, or reversing existing jurisprudence;

(3) The factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after availment of the modes of discovery under these Rules; and

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.[103]

A violation of the Rule is sanctioned strictly. The sanctions for violation of Rule 7, Section 3 (b) shall be determined by the court on motion or *motu proprio* after notice and hearing.[104] These include:

(1) "non-monetary directive or sanction;"[105]

(2) "order to pay a penalty[;]"[106] or

98. 1997 RULES OF CIVIL PROCEDURE, rule 8, § 3 (superseded in 2019).

99. *Id.*

100. *Id.*

101. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 7, § 3 (b).

102. *Id.*

103. *Id.* rule 7, §§ 3 (b) (1)-(4).

104. *Id.* rule 7, § 3 (c).

105. *Id.*

106. *Id.*

(3) "an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation, including attorney's fees for the filing of the motion for sanction."[107]

It must also be noted that the penalty may be imposed on the lawyer himself and his law firm may be held jointly and severally liable with him.[108] No monetary penalty may be passed on to the client.[109]

The amendment introduces a broader guaranty from the lawyer that the case filed is meritorious because it has evidentiary support and because it is based on "legal contentions [ ] warranted by existing law and jurisprudence."[110] However, it is still possible for a case to be dismissed by way of motion to dismiss,[111] dismissal based on affirmative defense,[112] demurrer to evidence,[113] or a decision on the merits stating that the case did not have proper evidentiary support.[114] In an adversarial system of litigation, therefore, there may be a ruling that one's case did not have proper evidentiary support.[115] The Rule stated above appears to put the lawyers at risk, in that situation, simply because they may have misappreciated the strength of their client's case.[116]

B. Verification

Pleadings that are verified are intended to secure an assurance that the allegations in the pleading are true and correct, are not speculative or merely

107. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 7, § 3 (c).

108. *Id.*

109. *Id.*

110. Cajucom, et al., *supra* note 85, at 79 & 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 7, § 3 (b) (2).

111. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 15, §§ 12 (a) (1)-(3).

112. *Id.* rule 6, § 5 (b), para 2.

113. *Id.* rule 33, § 1.

114. *See* BA Finance Corporation v. Co, G.R. No. 105751, 224 SCRA 163, 172 (1993).

115. *See, e.g.*, Sabellina v. Buray, G.R. No. 187727, 768 SCRA 618, 631-32 (2015).

116. *See* RUBEN E. AGPALO, LEGAL AND JUDICIAL ETHICS 197-98 (8th ed. 2009).

imagined, and have been made in good faith.[117] The wording of the attestation has now been amended to add the assurance that "[t]he factual allegations therein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery."[118] This is similar to the promise of the lawyer's signature in the previous Part. It can be said, however, that this amendment is more appropriate in this instance, as the litigant is in a better position to know the truth behind his allegations and the bases therefor.

C. Certification Against Forum Shopping

The Certification against Forum Shopping requires the litigant to promise, under oath, that

> (a) he or she 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 or her 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 or she should thereafter learn that the same or similar action or claim has been filed or is pending, he or she shall report that fact within five (5) calendar days therefrom to the court[.][119]

If the party is a corporation, the Certification should be signed by its duly authorized officer pursuant to a secretary's certificate or board resolution showing the authority of the officer to sign the Certification.[120] The amendment to Rule 7, Section 5 on the Certification against Forum Shopping now requires that "[t]he authorization of the affiant to act on behalf of a party ... be attached to the pleading."[121]

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117. Vallacar Transit, Inc. v. Catubig, G.R. No. 175512, 649 SCRA 281, 292 (2011) (citing Pajuyo v. Court of Appeals, G.R. No. 146364, 430 SCRA 492, 508-09 (2004)).

118. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 7, § 4 (c).

119. *Id.* rule 7, § 5, para. 1.

120. Société des Produits, Nestlé, S.A. v. Puregold Price Club, Inc., G.R. No. 217194, 839 SCRA 177, 193 (2017) (citing Eslaban, Jr. v. Vda. de Onorio, G.R. No. 146062, 360 SCRA 230, 236 (2001)).

121. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 7, § 5, para. 2.

It will be recalled, however, that there is jurisprudence stating that when the Certification is signed by an officer who is in a position to verify the truthfulness and correctness of the allegations in the petition such as the Chairman of the Board, President, General Manager, or Personnel Officer in relation to labor cases, he or she is presumed to be authorized and need not present proof of authority.[122] It is unclear whether the revision in the Rules has overturned the ruling in this case, but it is submitted that the best practice would be to attach proof of authority even if the signatory is one of the officers mentioned in the case above.

IV. RULE 10: AMENDMENTS

In case a party wishes to correct any allegation in his pleading, he may do so by amending the same either by right or with leave of court, thus, "[a] party may amend his *or her* pleading once as a matter of right at any time before a responsive pleading is served or, in the case of a reply, at any time within ten (10) *calendar* days after it is served."[123]

It is in this context that the definition of a pleading has particular significance. Thus, in case a defendant has not yet filed an Answer and instead filed a Motion to Dismiss, the plaintiff may still amend his complaint as a matter of right.[124]

The amended Rule 10, Section 3 explains when and under what circumstances a pleading may be amended by leave of court, viz. —

> Section 3. *Amendments by leave of court*. — Except as provided in the next preceding Section, substantial amendments may be made only upon leave of court. But such leave *shall* be refused if it appears to the court that the motion was made with intent to delay or *confer jurisdiction on the court, or the pleading stated no cause of action from the beginning which could be amended*. Orders of the court upon the matters provided in this Section shall be made upon motion filed in court, and after notice to the adverse party, and an opportunity to be heard.
>
> Section 4. *Formal amendments*. — A defect in the designation of the parties and other clearly clerical or typographical errors may be summarily corrected

122. Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue, G.R. No. 151413, 545 SCRA 10, 18 (2008).

123. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 10, § 2.

124. *Bautista*, 476 SCRA at 419.

> by the court at any stage of the action, at its initiative or on motion, provided no prejudice is caused thereby to the adverse party.[125]

It has already been ruled that in case the amendment is done as a matter of right (i.e., when there is yet no responsive pleading), the amendment can be on any matter, even to confer jurisdiction.[126] As clarified by the amendment to Rule 10, Section 3, an amendment which seeks to correct a jurisdictional error is not allowed *when the amendment is no longer a matter of right*.[127] There is therefore no inconsistency between the amendment to the rule and the jurisprudential rule.

Note also that the rules now state that amendment by leave of court will not be granted if it is meant to state a cause of action when there is none at the beginning.[128] This is consistent with the decision in *Swagman Hotels and Travel, Inc. v. Court of Appeals*,[129] where the Court reiterated an earlier ruling that

> unless the plaintiff has a valid and subsisting cause of action at the time his action is commenced, the defect cannot be cured or remedied by the acquisition or accrual of one while the action is pending, and a supplemental complaint or an amendment setting up such after-accrued cause of action is not permissible.[130]

However, there is jurisprudence stating that an amendment may be validly made even if it alters a cause of action previously stated.[131] In one case, the plaintiff filed a complaint for injunction and damages to enjoin the defendant from terminating the lease contract and to recover damages for breach of contract.[132] After the filing of the Answer, the plaintiff filed an amended complaint with leave of court to include a cause of action for "Reformation

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125. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 10, §§ 3-4.

126. Rosario and Untalan v. Carandang, et al., 96 Phil. 845, 851 (1955).

127. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 10, § 3.

128. *Id.*

129. Swagman Hotels and Travel, Inc. v. Court of Appeals, G.R. No. 161135, 455 SCRA 175 (2005).

130. *Id.* at 187 (citing Surigao Mine Exploration v. Harris, 68 Phil. 113, 122 (1939)) (emphasis omitted).

131. Philippine Ports Authority v. William Gothong & Aboitiz (WG&A), Inc., G.R. No. 158401, 542 SCRA 514, 519 (2008) (citing Valenzuela v. Court of Appeals, G.R. No. 131175, 363 SCRA 779, 788 (2001)).

132. *Philippine Ports Authority*, 542 SCRA at 516.

of Contract."[133] The Court held that an amendment may validly alter the cause of action or defense of the parties.[134] It seems that this case is still good law, as it does not seek to introduce a cause of action when there was originally none, but merely offers a change in the cause of action.[135] It must be added, though, that the original cause of action must have been sufficient in itself, at least as of the filing of the complaint.[136] Otherwise, allowing an amendment to alter the cause of action to cure one that was originally defective will violate the purpose for the amendment just introduced.[137]

It will also be recalled that, under the old rule, an amendment to conform to evidence would have been necessary when evidence on a new issue is presented over the objection of the opposing party.[138] The new Rule simplifies the procedure —

> Section 5. *No amendment necessary to conform to or authorize presentation of evidence*. — When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. *No amendment of such pleadings deemed amended is necessary to cause them to conform to the evidence*.[139]

It is thus submitted that if the party objects to the new matters, the court may simply deny admission, and no amendment can cure the late introduction. On the other hand, if there is *no* objection, the evidence shall just be admitted without need of amendment.

V. RULE 13: FILING AND SERVICE OF PLEADINGS, JUDGMENTS, AND OTHER PAPERS

The amended Rule 13 provides —

> Section 1. *Coverage*. — This Rule shall govern the filing of all pleadings, *motions, and other court submissions*, as well as their service, except those for which a different mode of service is prescribed.

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133. *Id*. at 517.

134. *Id*. at 519 (citing *Valenzuela*, 363 SCRA at 788).

135. *See id*.

136. *See* Central Bank Board of Liquidators v. Banco Filipino Savings and Mortgage Bank, G.R. No. 173399, 818 SCRA 278, 290 (2017).

137. *See* Tiu v. Philippine Bank of Communications, G.R. No. 151932, 596 SCRA 432, 445 (2009).

138. 1997 RULES OF CIVIL PROCEDURE, rule 10, § 5 (superseded in 2019).

139. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 10, § 5.

> Section 2. *Filing and Service, defined.* — Filing is the act of *submitting* the pleading or other paper to the *court*.
>
> Service is the act of providing a party with a copy of the pleading *or any other court submission*. If *a* party has appeared by counsel, service upon *such party* shall be made upon his *or her* counsel, unless service upon the party *and the party's counsel* is ordered by the court. Where one counsel appears for several parties, *such counsel* shall only be entitled to one copy of any paper served by the opposite side.
>
> *Where several counsels appear for one party, such party shall be entitled to only one copy of any pleading or paper to be served upon the lead counsel if one is designated, or upon any one of them if there is no designation of a lead counsel.*
>
> Section 3. *Manner of filing.* — The filing of pleadings *and other court submissions* shall be made by:
>
> (1) *Submitting personally the original thereof, plainly indicated as such, to the court;*
>
> (2) Sending them by registered mail;
>
> (3) *Sending them by accredited courier; or*
>
> (4) *Transmitting them by electronic mail or other electronic means as may be authorized by the Court in places where the court is electronically equipped.*
>
> In the first case, the clerk of court shall endorse on the pleading the date and hour of filing. *In the second and third cases,* the date of the mailing of motions, pleadings, and other court submissions, and payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing, payment, or deposit in court. The envelope shall be attached to the record of the case. *In the fourth case, the date of electronic transmission shall be considered as the date of filing.*[140]

The terms "filing" and "service" form the lifeblood of litigation practice. A document is "filed" when it is submitted to the court,[141] and it is "served" when it is sent to the opposing party.[142] Since a considerable part of litigation is the exchange of written documents between the parties and the court, this rule is of high practical significance.[143]

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140. *Id.* rule 13, §§ 1-3.

141. *Id.* rule 13, § 2, para. 1.

142. *Id.* rule 13, § 2, para. 2.

143. *See* Rhys Novak & Simon Heatley, The Importance of Service: Dodging a Procedural Death, *available at*

Under the old Section 3 of Rule 13, court submissions are considered filed when the original is presented to court or by sending them by registered mail.[144] In case of filing by registered mail, the date of mailing shall be considered as the date of the filing in court.[145]

The 2019 Amendments now allow the filing of pleadings and other court submissions by:

> (a) *Submitting personally the original thereof, plainly indicated as such, to the court;*[146]
>
> (b) Sending them by registered mail;[147]
>
> (c) *Sending them by accredited courier;*[148] or
>
> (d) *Transmitting them by electronic mail or other electronic means as may be authorized by the Court in places where the court is electronically equipped.*[149]

The availment of private couriers was not actually prohibited under the old Rules, but considering it was not an official mode of filing, it was the date of actual receipt of the document and not the date of its delivery to the carrier that was deemed the date of filing.[150] With the 2019 Amendments, the date of delivery to the accredited courier is deemed the date of filing, similar to the rule on filing by registered mail.[151]

It must be noted, however, that notwithstanding the foregoing, Section 14 of Rule 13, as amended, provides that

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https://www.charlesrussellspeechlys.com/en/news-and-insights/insights/litigation--dispute-resolution/2019/the-importance-of-service-dodging-a-procedural-death (last accessed July 31, 2021) [https://perma.cc/3993-8LXV].

144. 1997 RULES OF CIVIL PROCEDURE, rule 13, § 3 (superseded in 2019).

145. *Id.*

146. *Id.* rule 13, § 3 (a).

147. *Id.* rule 13, § 3 (b).

148. *Id.* rule 13, § 3 (c).

149. *Id.* rule 13, § 3 (d).

150. REGALADO, *supra* note 4 at 203-04 (citing Benguet Electric Cooperative, Inc. v. NLRC, G.R. No. 89070, 209 SCRA 55, 60-61 (1992) & Industrial Timber Corp. v. NLRC, G.R. No. 111985, 233 SCRA 597, 602 (1994)).

151. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 13, § 3.

> the following orders, pleadings, and other *documents must be served or filed personally or by registered mail when allowed, and shall not be served or filed electronically, unless permission is granted by the Court*:
>
> *(a) Initiatory pleadings and initial responsive pleadings, such as an answer;*
>
> *(b) Subpoenae, protection orders, and writs;*
>
> *(c) Appendices and exhibits to motions, or other documents that are not readily amenable to electronic scanning may, at the option of the party filing such, be filed and served conventionally; and*
>
> (d) *Sealed and confidential documents or records.*[152]

Similarly, under Section 5 of the same Rule,

> [p]leadings, motions, notices, orders, judgments, and *other court submissions shall be served personally or by registered mail, accredited courier, electronic mail, facsimile transmission, other electronic means as may be authorized by the Court, or as provided for in international conventions to which the Philippines is a party.*[153]

Further, Section 9 of Rule 13 provides —

> *Service by electronic means and facsimile shall be made if the party concerned consents to such modes of service.*
>
> *Service by electronic means shall be made by sending an e-mail to the party's or counsel's electronic mail address, or through other electronic means of transmission as the parties may agree on, or upon direction of the court.*
>
> *Service by facsimile shall be made by sending a facsimile copy to the party's or counsel's given facsimile number.*[154]

The manner of serving documents by electronic means can be summarized as follows:

(1) sending an e-mail to the party's or counsel's electronic mail address;[155]

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152. *Id.* rule 13, § 14.

153. *Id.* rule 13, § 5.

154. *Id.* rule 13, § 9.

155. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 13, § 9, para 2.

(2) through other electronic means of transmission as the parties may agree on; or[156]

(3) upon direction of the court.[157]

Another key amendment is the rule on presumptive notice of court settings —

> Section 10. Presumptive service. — *There shall be presumptive notice to a party of a court setting if such notice appears on the records to have been mailed at least twenty (20) calendar days prior to the scheduled date of hearing and if the addressee is from within the same judicial region of the court where the case is pending, or at least thirty (30) calendar days if the addressee is from outside the judicial region.*[158]

The revision is an important one, as it places the burden on the party to inquire from the court when his or her case is set for hearing. He or she cannot claim lack of notice of a hearing when it appears on the records that it was mailed to the addressee, either 20 days before the scheduled hearing, if the addressee lives within the same judicial region as the court where the case is pending, or 30 days before the scheduled hearing, if the addressee lives outside of the judicial region.[159]

Section 13 of Rule 13, as amended, provides for the service of judgments, final orders, or resolutions which must still be done personally or through registered mail or by accredited courier if the court grants the *ex parte* motion of any party to the case to that effect.[160]

> Section 13. *Service of Judgments, Final Orders*[,] or Resolutions. — Judgments, final orders, or resolutions shall be served either personally or by registered mail. *Upon ex parte motion of any party in the case, a copy of the judgment, final order, or resolution may be delivered by accredited courier at the expense of such party.* When a party summoned by publication has failed to appear in the action, judgments, final orders[,] or resolutions against him *or her* shall be served upon him or her also by *means of* publication at the expense of the prevailing party.[161]

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156. *Id.*

157. *Id.*

158. *Id.* rule 13, § 10.

159. *Id.*

160. *Id.* rule 13, § 13.

161. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 13, § 13.

Aside from the above-mentioned court-issued documents, all other court documents may be served electronically under Section 18 of Rule 13, to wit —

> *Section 18. Court-issued orders and other documents. — The court may electronically serve orders and other documents to all the parties in the case which shall have the same effect and validity as provided herein. A paper copy of the order or other document electronically served shall be retained and attached to the record of the case.*[162]

MODE OF FILING	COMPLETENESS[163]	PROOF OF FILING[164]
Personal filing	The clerk of court shall endorse on the pleading the date and hour of filing.	(1) Presence in the record; *or*, (2) If not in the record, by the written or stamped acknowledgment of its filing by the clerk of court on a copy of the pleading or court submission.
Sending by Registered Mail	The date of the mailing shall be considered as the date of their filing, payment, or deposit in court.	(1) Registry receipt; *and*, (2) Affidavit of the person who mailed it
Sending by Accredited Courier Service	The date of the mailing shall be considered as the date of their filing, payment, or deposit in court.	(1) Courier's Official Receipt; (2) Document tracking number; *and*,

162. *Id.* rule 13, § 18 (emphasis supplied).

163. *Id.* rule 13, § 3.

164. *Id.* rule 13, § 16.

		(3) Affidavit of the person who mailed it
Transmitting by electronic mail or other electronic means	The date of electronic transmission shall be considered as the date of filing.	(1) Copy of the electronic acknowledgment of its filing by the court; *and*, (2) Affidavit of electronic filing.

MODE OF SERVICE	COMPLETENESS[165]	PROOF OF SERVICE[166]
Personal Service	Upon actual delivery.	(1) Written admission of the party served; *or*, (2) Official return of the server; *or*, (3) Affidavit of the party serving.
Service by Registered Mail	Upon actual receipt by the addressee, or after five calendar days from the date he or she received the first notice of the postmaster, whichever date is earlier.	(1) Registry receipt issued by the mailing office; *and*, (2) Affidavit of the person mailing.
Service by Ordinary Mail	Upon expiration of ten calendar days after	Affidavit of the person mailing.

165. *Id.* rule 13, § 15.

166. *Id.* rule 13, § 17.

	mailing, unless the court otherwise provides.	
Substituted Service	Upon delivery of the copy to the clerk of court, with proof of failure of both personal service and service by mail.	(1) Presence in the record; *or*, (2) If not in the record, by the written or stamped acknowledgment of the substituted service by the clerk of court on a copy of the pleading or court submission
Service by Accredited Courier	(1) Upon actual receipt by the addressee; or, (2) after at least two attempts to deliver by the courier service; or, (3) upon the expiration of five calendar days after the first attempt to deliver	(1) Courier's official receipt; (2) Document tracking number; *and*, (3) Affidavit of service
Service by Electronic Means and facsimile	(1) Electronic service. (2) Complete at the time of the electronic transmission of the document; or	(1) Printed proof of transmittal; *and*, (2) Affidavit of service

	(3) When available, at the time that the electronic notification of service of the document is sent. (4) Facsimile. Upon receipt by the other party, as indicated in the facsimile transmission printout.	

VI. RULE 14: SUMMONS

Summons is an important step to commence litigation.[167] In *Express Padala (Italia) S.P.A. v. Ocampo*,[168] the Court explained the importance of summons, thus —

> The service of summons is a vital and indispensable ingredient of a defendant's constitutional right to due process. As a rule, if a defendant has not been validly summoned, the court acquires no jurisdiction over his person, and a judgment rendered against him is void. Since the RTC never acquired jurisdiction over the person of Ocampo, the judgment rendered by the court could not be considered binding upon her.[169]

Section 1 of Rule 14 provides for the timetable in issuing the summons to be served on the defendant —

> Section 1. *Clerk to issue summons. — Unless the complaint is on its face dismissible under Section 1, Rule 9, the court shall, within five (5) calendar days from receipt of*

167. Avon Insurance PLC v. Court of Appeals, G.R. No. 97642, 278 SCRA 312, 325 (1997) (citing Munar v. Court of Appeals, G.R. No. 100740, 238 SCRA 372, 379 (1994)).

168. Express Padala (Italia) S.P.A., now BDO Remittance (Italia) S.P.A. v. Ocampo, G.R. No. 202505, 839 SCRA 47 (2017).

169. *Id.* at 56 (citing Chu v. Mach Asia Trading Corporation, G.R. No. 184333, 694 SCRA 302, 311 (2013)).

> *the initiatory pleading and proof of payment of the requisite legal fees, direct the* clerk of court to issue the corresponding summons to the defendants.[170]

As a general rule, "within five (5) calendar days from receipt of the initiatory pleading and proof of payment of the requisite legal fees," the court should direct the clerk of court to issue summons to the defendants.[171] Under the old Rules, the clerk of court shall issue summons so long as an initiatory pleading was filed and proof of payment of the fees were presented.[172]

As amended, however, the court will not direct the issuance of summons if the initiatory pleading is, on its face, dismissible on the grounds mentioned in Rule 9, Section 1, to wit:

(1) no jurisdiction over the subject matter;[173]

(2) *litis pendentia*;[174]

(3) *res judicata*;[175] and

(4) prescription.[176]

A major change in Rule 14, Section 2 of the Rules of Court is the addition of a request for an authorization for the plaintiff to serve summons to the defendant, which may be granted upon the filing of an *ex parte motion*.[177]

> Section 2. *Contents*. — The summons shall be directed to the defendant, signed by the clerk of court under seal, and contain:
>
> (a) The name of the court and the names of the parties to the action;
>
> (b) *When authorized by the court upon ex parte motion, an authorization for the plaintiff to serve summons to the defendant*;
>
> (c) A direction that the defendant answer within the time fixed by these Rules; and

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170. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 14, § 1.

171. *Id.*

172. 1997 RULES OF CIVIL PROCEDURE, rule 14, § 1 (superseded in 2019).

173. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 9, § 1.

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.* rule 14, § 2 (b).

(d) A notice that unless the defendant so answers, plaintiff will take judgment by default and may be granted the relief applied for.

A copy of the complaint and order for appointment of guardian *ad litem*, if any, shall be attached to the original and each copy of the summons.[178]

Rule 14, Section 3 of the Rules of Court, as amended, states who are allowed to serve summons —

Section 3. *By whom served.* — The summons may be served by the sheriff, his *or her* deputy, or other proper court officer, *and in case of failure of service of summons by them, the court may authorize the plaintiff* [—] *to serve the summons* [—] *together with the sheriff.*

In cases where summons is to be served outside the judicial region of the court where the case is pending, the plaintiff shall be authorized to cause the service of summons.

If the plaintiff is a juridical entity, it shall notify the court, in writing, and name its authorized representative therein, attaching a board resolution or secretary's certificate thereto, as the case may be, stating that such representative is duly authorized to serve the summons on behalf of the plaintiff.

If the plaintiff misrepresents that the defendant was served summons, and it is later proved that no summons was served, the case shall be dismissed with prejudice, the proceedings shall be nullified, and the plaintiff shall be meted appropriate sanctions.

If summons is returned without being served on any or all the defendants, the court shall order the plaintiff to cause the service of summons by other means available under the Rules.

Failure to comply with the order shall cause the dismissal of the initiatory pleading without prejudice.[179]

Thus, the following may serve summons pursuant to the foregoing Section:

(1) Sheriff or deputy sheriff;[180]

(2) Other proper court officer;[181] or

(3) Plaintiff,[182] under the following instances:

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178. *Id.* rule 14, § 2.

179. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 14, § 3.

180. *Id.* rule 14, § 3, para. 1.

181. *Id.*

182. *Id.*

(i) When sheriff or deputy or other proper court officer fails to serve summons, but the plaintiff must serve summons with the sheriff;[183] or

(ii) Summons is to be served outside the judicial region of the court where the case is pending;[184] or

(iii) If summons is returned without being served on any or all defendants.[185]

As stated above, the plaintiff may be authorized to serve summons if the sheriff or other proper officer of the court failed to serve summons.[186] If the plaintiff is a juridical entity, it must name an authorized representative to serve summons and attach a board resolution or secretary's certificate authorizing that person to serve summons.[187]

It is worth noting that although this mode of service is optional on the part of the plaintiff, the plaintiff could be ordered by the court to serve summons if there was a previous attempt by the process server and summons was already "returned without being served on any or all the defendants[.]"[188] "Failure to comply with [this] order shall cause the dismissal of the initiatory pleading *without prejudice*."[189]

> Section 4. *Validity of summons and issuance of alias summons. — Summons shall remain valid until duly served, unless it is recalled by the court. In case of loss or destruction of summons, the court may, upon motion, issue an alias summons.*
>
> *There is failure of service after unsuccessful attempts to personally serve the summons on the defendant in his or her address indicated in the complaint. Substituted service should be in the manner provided under Section 6 of this Rule.*[190]

Under the old provision, the summons issued by the court had a lifespan of five days, and upon the expiration of the period without summons having been served, the plaintiff would have to request for an alias summons to be

183. *Id.*

184. *Id.* rule 14, § 3, para. 2.

185. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 14, § 3, para. 1.

186. *Id.*

187. *Id.* rule 14, § 3, para. 3.

188. *Id.* rule 14, § 3, para. 5.

189. *Id.* rule 14, § 3, para. 6.

190. *Id.* rule 14, § 4.

issued.[191] Now, summonses remain valid until duly served or recalled by the court.[192] This amendment and the addition of the plaintiff as an authorized person to serve summons are clearly meant to cut one area of delay in the disposition of cases. As amended, an alias summons is only issued upon motion on the ground that summons is lost or destroyed.[193]

The second paragraph of Rule 14, Section 4 of the Rules of Court states that failure of service of summons occurs "after unsuccessful attempts to personally serve the summons on the defendant in his or her address indicated in the complaint."[194] Personal service of summons is effected "by handing a copy [of the summons] to the defendant in person and informing the defendant that he or she is being served[.]"[195]

> Section 5. *Service in person on defendant*. — Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person *and informing the defendant that he or she is being served,* or, if *he or she* refuses to receive and sign for it, *by leaving the summons within the view and in the presence of the defendant*.[196]

As amended, the provision also considers it personal service if the summons is left within the view and presence of the defendant, when the defendant refuses to receive and sign the copy of the summons that is in the possession of the person serving it.[197] After a number of failed attempts to personally serve summons, substituted service may be resorted to.[198]

> Section 6. *Substituted service*. — If, for justifiable causes, the defendant cannot be served *personally after at least three (3) attempts on two (2) different dates*, service may be effected:
>
> (a) By leaving copies of the summons at the defendant's residence *to a person at least eighteen (18) years of age and of sufficient discretion* residing *therein*;

191. 1997 RULES OF CIVIL PROCEDURE, rule 14, § 5 (superseded in 2019).

192. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 14, § 4, para. 1.

193. *Id.*

194. *Id.* rule 14, § 4, para. 2.

195. *Id.* rule 14, § 5.

196. *Id.*

197. *Id.*

198. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 14, § 6.

> (b) By leaving copies of the summons at the defendant's office or regular place of business with some competent person in charge thereof. *A competent person includes, but is not limited to, one who customarily receives correspondences for the defendant*;
>
> (c) *By leaving copies of the summons, if refused entry upon making his or her authority and purpose known, with any of the officers of the homeowners' association or condominium corporation, or its chief security officer in charge of the community or the building where the defendant may be found; and*
>
> (d) *By sending an electronic mail to the defendant's electronic mail address, if allowed by the court.*[199]

Under the old rule, substituted service may be effected if, after a reasonable time, defendant cannot be served with summons personally.[200] This provision has incorporated what jurisprudence has considered as a *reasonable time*, i.e., after the failure (for justifiable reasons) to serve summons personally three times, on two different dates.[201] The provision now also states that the person to whom the summons must be given at the defendant's residence must be a resident at the said premises and at least 18 years old,[202] as opposed to the old provision which merely required the person to be of suitable age.[203]

Similar to the old provision, substituted service may also be effected at the "defendant's office or regular place of business" if copies are left with a "competent person in charge thereof."[204] The new provision states that a person who "customarily receives correspondences for the defendant[ ]" at his office or regular place of business is included in the term "competent person" with whom a copy of the summons may be left.[205] It is also important to point out that in *Guanzon v. Arradaza*,[206] the Court held that "[i]t is not necessary

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199. *Id.*

200. 1997 RULES OF CIVIL PROCEDURE, rule 14, § 7 (superseded in 2019).

201. *See, e.g.*, Manotoc v. Court of Appeals, G.R. No. 130974, 499 SCRA 21, 34-35 (2006) (citing Far East Realty Investment Inc. v. Court of Appeals, G.R. No. L-36549, 166 SCRA 256, 262 (1988)).

202. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 14, § 6 (a).

203. *See* 1997 RULES OF CIVIL PROCEDURE, rule 14, § 7 (superseded in 2019).

204. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 14, § 6 (b).

205. *Id.*

206. Guanzon v. Arradaza, G.R. No. 155392, 510 SCRA 309 (2006).

that the person in charge of the defendant's regular place of business be specifically authorized to receive the summons. It is enough that he appears to be in charge."[207]

Under paragraph (c), it is now considered as valid substituted service if a copy of the summons is left with the officers of the homeowners' association or condominium corporation or with its chief security officer in charge of the village or building.[208] This is a codification of the Court's ruling in *Robinson v. Miralles*,[209] where the Court considered the service of summons upon the security guard of a gated subdivision as valid because the guard, under orders from the defendant, disallowed entry into the village.[210]

Section 9 permits service that is consistent with international conventions, providing that "[s]ervice may be made through methods which are consistent with established international conventions to which the Philippines is a party."[211]

Section 9 is a new provision recognizing that the Philippines may be a party to an international convention which agrees to other methods of service of summons.[212] In relation to this provision, on 11 September 2020, the Supreme Court issued Administrative Order No. 251-2020 or the Guidelines on the Implementation in the Philippines of the Hague Service Convention on the Service Abroad of Judicial Documents in Civil and Commercial Matters.[213]

Section 11 provides for service upon spouses.[214] "When spouses are sued jointly, service of summons should be made to each spouse individually."[215]

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207. *Id.* at 318 (citing Gochangco v. CFI of Negros Occidental, G.R. No. L-49396, 157 SCRA 40, 49 (1988)).

208. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 14, § 6 (c).

209. Robinson v. Miralles, G.R. No. 163584, 510 SCRA 678 (2006).

210. *Id.* at 684.

211. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 14, § 9.

212. *Id.*

213. Supreme Court, Guidelines on the Implementation in the Philippines of the Hague Service Convention on the Service Abroad of Judicial Documents in Civil and Commercial Matters, Administrative Order No. 251-2020 [SC A.O. No. 251-2020] (Sept. 11, 2020).

214. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 14, § 11.

215. *Id.*

Rule 14, Section 11 is a codification of the ruling in *Garcia v. Sandiganbayan*,[216] where the Court considered the service of summons on General Carlos Garcia at the detention center, on behalf of his wife and children, as improper.[217] In that case, General Garcia, together with his wife Clarita Garcia and their three children, were defendants in a civil case.[218] Summons was served on all of them through General Garcia, who was then detained at the Philippine National Police Detention Center.[219] Considering that Mrs. Garcia and the three Garcia children were not residents at the detention center, the substituted service through General Garcia was declared invalid.[220] Rule 14, Section 11 highlights the rule that requires separate service of summons on co-defendants, even if they are spouses.[221]

The amended Rules of Civil Procedure also provide for the manner of service when the defendant is a private juridical entity —

> Section 12. *Service upon domestic private juridical entity*. — When the defendant is a corporation, partnership[,] or association organized under the laws of the Philippines with a juridical personality, service may be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel *of the corporation wherever they may be found, or in their absence or unavailability, on their secretaries*.
>
> *If such service cannot be made upon any of the foregoing persons, it shall be made upon the person who customarily receives the correspondence for the defendant at its principal office*.
>
> *In case the domestic juridical entity is under receivership or liquidation, service of summons shall be made on the receiver or liquidator, as the case may be*.
>
> *Should there be a refusal on the part of the persons above-mentioned to receive summons despite at least three (3) attempts on two (2) different dates, service may be made electronically, if allowed by the court, as provided under Section 6 of this Rule*.[222]

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216. Garcia v. Sandiganbayan, G.R. No. 170122, 603 SCRA 348 (2009).

217. *Id.* at 367.

218. *Id.* at 353.

219. *Id.* at 357.

220. *Id.* at 365.

221. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 14, § 11.

222. *Id.* rule 14, § 12.

It will be recalled that in *Vlason Enterprises Corporation v. Court of Appeals*,[223] summons was served on the personal secretary of the president of defendant corporation.[224] The Court explained that it would have been possible to effect valid service in that manner under the proper circumstances, thus —

> A corporation may be served summons through its agents or officers who under the Rules are designated to accept service of process. [S]ummons addressed to a corporation and served on the secretary of its president binds that corporation. This is based on the rationale that service must be made on a representative so integrated with the corporation sued, that it is safe to assume that said representative had sufficient responsibility and discretion to realize the importance of the legal papers served and to relay the same to the president or other responsible officer of the corporation being sued. *The secretary of the president satisfies this criterion*. This rule requires, however, that the secretary should be an employee of the corporation sought to be summoned. Only in this manner can there be an assurance that the secretary will 'bring home to the corporation [ ]the[ ] notice of the filing of the action' against it.
>
> In the present case, Bebero was the secretary of Ang-liongto, who was president of both VSI and petitioner, but she was an employee of VSI, not of petitioner. The piercing of the corporate veil cannot be resorted to when serving summons. Doctrinally, a corporation is a legal entity distinct and separate from the members and stockholders who compose it. However, when the corporate fiction is used as a means of perpetrating a fraud, evading an existing obligation, circumventing a statute, achieving or perfecting a monopoly or, in generally perpetrating a crime, the veil will be lifted to expose the individuals composing it. None of the foregoing exceptions has been shown to exist in the present case. Quite the contrary, the piercing of the corporate veil in this case will result in manifest injustice. This we cannot allow. Hence, the corporate fiction remains.[225]

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223. Vlason Enterprises Corporation v. Court of Appeals, G.R. Nos. 121662-64, 310 SCRA 26 (1999).

224. *Id.* at 36.

225. *Id.* at 55-57 (citing G & G Trading Corporation v. Court of Appeals, G.R. No. L-78299, 158 SCRA 466, 468 (1988); Far Corporation v. Francisco, G.R. L-57218, 146 SCRA 197, 203 (1986); ATM Trucking Incorporated v. Buencamino, G.R. No. L-62445, 124 SCRA 434, 436 (1983); Summit Trading and Development Corp. v. Avendaño, G.R. No. L-60038, 135 SCRA 397, 400 (1985); Kanlaon Construction Enterprises Co., Inc. v. NLRC, G.R. No. 126625, 279 SCRA 337, 346 (1997); Villa Rey Transit, Inc. v. Far East Motor Corporation, G.R. No. L-31339, 81 SCRA 298, 303 (1978); Delta Motor Sales

However, in *Mason v. Court of Appeals*,[226] the Court ruled —

> We decided in Villarosa's favor and declared the trial court without jurisdiction to take cognizance of the case. We held that there was no valid service of summons on Villarosa as service was made through a person not included in the enumeration in [Rule 14, Section 11] of the 1997 Rules of Civil Procedure, which revised the [Rule 14, Section 13] of the 1964 Rules of Court. We discarded the trial court's basis for denying the motion to dismiss, namely, private respondent's substantial compliance with the rule on service of summons, and fully agreed with petitioner's assertions that the enumeration under the new rule is restricted, limited[,] and exclusive, following the rule in statutory construction that *expressio unios est exclusio alterius*. Had the Rules of Court Revision Committee intended to liberalize the rule on service of summons, we said, it could have easily done so by clear and concise language. Absent a manifest intent to liberalize the rule, we stressed strict compliance with Section 11, Rule 14 of the 1997 Rules of Civil Procedure.
>
> ...
>
> At this juncture, it is worth emphasizing that notice to enable the other party to be heard and to present evidence is not a mere technicality or a trivial matter in any administrative or judicial proceedings. The service of summons is a vital and indispensable ingredient of due process. We will deprive private respondent of its right to present its defense in this multi-million [P]eso suit, if we disregard compliance with the rules on service of summons.[227]

The Rule now clarifies that the following officers of a domestic private juridical entity may be served with summons for the domestic private juridical entity:

(1) president;

(2) managing partner;

(3) general manager;

(4) corporate secretary;

Corporation v. Mangosing, G.R. No. L-41667, 70 SCRA 598, 603 (1976); & Filmerco Commercial Co., Inc. v. Intermediate Appellate Court, G.R. No. L-70661, 149 SCRA 193, 203-04 (1987)) (emphasis supplied).

226. Mason v. Court of Appeals, G.R. No. 144662, 413 SCRA 303 (2003).

227. *Id.* at 311-12 (citing National Power Corporation v. NLRC, G.R. Nos. 90933-61, 272 SCRA 704, 723 (1997) (citing Philippine National Construction Corp. v. Ferrer-Calleja, G.R. No. L-80485, 167 SCRA 294, 301 (1985))).

(5) treasurer; or

(6) in-house counsel.[228]

The key amendment expressly allows that service of summons for the domestic private juridical entity may be effected on these officers "wherever they may be found," *and on their respective secretaries, if the officers are unavailable or absent*.[229] However, it is submitted that the ruling in *Vlason Enterprises Corporation*, which states that the secretary should be actually employed by or at least officially connected with the defendant-corporation,[230] still remains.

Additionally, the Section states that service of summons may be "made upon the person who customarily receives the correspondence for the defendant"[231] under the following conditions: (1) service of summons must be made at the domestic private juridical entity's principal office; and (2) only in the absence of the six officers or their secretaries.[232]

Finally, in keeping with technology, the Rules provide for when summons may be served through electronic mail — only if any of the authorized individuals refuse to receive summons "despite at least three [ ] attempts on two [ ] different dates[.]"[233]

Sections 13 and 23 are key amendments to the Rule on summons. Section 13, on one hand, provides for the duty of the counsel of record —

> Section 13. *Duty of counsel of record. — Where the summons is improperly served and a lawyer makes a special appearance on behalf of the defendant to, among others, question the validity of service of summons, the counsel shall be deputized by the court to serve summons on his or her client*.[234]

Section 23, on the other hand, provides for the effects of a voluntary appearance by the defendant. It states that "[t]he defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of

228. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 14, § 12, para. 1.

229. *Id.*

230. *Vlason Enterprises Corporation*, 310 SCRA at 56.

231. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 14, § 12, para. 2.

232. *Id.*

233. *Id.* rule 14, § 12, para. 3.

234. *Id.* rule 14, § 13.

jurisdiction over the person of the defendant *shall be deemed* a voluntary appearance."[235]

It will be recalled that even under the old Rules, voluntary appearance is "equivalent to service of summons."[236] However, the old Rule expressly stated that in filing a motion to dismiss which challenges the court's jurisdiction over the person of the defendant, the inclusion of other grounds to dismiss does not constitute voluntary appearance.[237]

With the amendment, however, a defendant will be deemed to have voluntarily appeared if he includes other grounds in a motion to dismiss with the ground of lack of jurisdiction over the person of the defendant.[238] In other words, in order not to be considered as having voluntarily appeared, the motion to dismiss must only raise the ground of lack of jurisdiction over the person of the defendant. Considering that a defendant may not file a motion to dismiss on the ground of lack of jurisdiction over his person under the 2019 Amendments,[239] it seems that this ground may only be raised as an affirmative defense in an Answer. This would still be consistent with *Perkin Elmer Singapore Pte Ltd. v. Dakila Trading Corporation*,[240] where the Court ruled that the filing of an Answer *ad cautelam* with compulsory counterclaim could not be considered as a voluntary appearance of the petitioner before the Regional Trial Court.[241]

Note, however, that Rule 14, Section 13 imposes upon a lawyer who makes a special appearance, which is similar to an Answer *ad cautelam*, the obligation to himself or herself serve summons on his or her client.[242] Clearly, the amendment places a premium not on the manner of service of the summons, but on the actual fact of its receipt. It perhaps recognizes the reality that once counsel enters his appearance, there was already actual notice of the complaint and summons to the defendant.[243]

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235. *Id.* rule 14, § 23.

236. 1997 RULES OF CIVIL PROCEDURE, rule 14, § 20 (superseded in 2019).

237. *Id.*

238. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 14, § 23.

239. *Id.* rule 15, § 12 (a).

240. Perkin Elmer Singapore Pte Ltd. v. Dakila Trading Corporation, G.R. No. 172242, 530 SCRA 170 (2007).

241. *Id.* at 193.

242. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 14, § 13.

243. *See* Cajucom, et al., *supra* note 85, at 83.

The 2019 Revised Rules of Civil Procedure also provide for the manner of serving summons when the defendant is a foreign private juridical entity, to wit —

> Section 14. *Service upon foreign private juridical entities.* — When the defendant is a foreign private juridical entity which has transacted *or is doing* business in the Philippines, *as defined by law,* service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers, agents, *directors*[,] *or trustees* within the Philippines.
>
> *If the foreign private juridical entity is not registered in the Philippines, or has no resident agent but has transacted or is doing business in it, as defined by law, such service may, with leave of court, be effected outside of the Philippines through any of the following means:*
>
> (a) *By personal service coursed through the appropriate court in the foreign country with the assistance of the [D]epartment of [F]oreign [A][ffairs*;
>
> (b) *By publication once in a newspaper of general circulation in the country where the defendant may be found and by serving a copy of the summons and the court order by registered mail at the last known address of the defendant*;
>
> (c) *By facsimile*;
>
> (d) *By electronic means with the prescribed proof of service*; *or*
>
> (e) *By such other means as the court, in its discretion, may direct.*[244]

There are two categories of foreign private juridical entities. The *first category* refers to foreign private juridical entities that are registered to do business in the Philippines and have transacted or are doing business in the Philippines.[245] The summons for this group may be personally served on their designated resident agent or, if they do not have a designated resident agent, either on the "government official designated by law to that effect,"[246] or any of the foreign private juridical entity's "officers, agents, directors[,] or trustees within the Philippines."[247]

The *second category* are foreign private juridical entities that are *not* registered in the Philippines or that have no resident agents but have transacted or are

244. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 14, § 14.

245. *Id.* rule 14, § 14, para. 1. *See also* CESAR L. VILLANUEVA & TERESA S. VILLANUEVA-TIANSAY, PHILIPPINE CORPORATE LAW 811 (2018).

246. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 14, § 14, para. 1.

247. *Id.*

doing business in the Philippines.[248] The service of summons for this group "may, with leave of court, be effected outside of the Philippines"[249] by means of

(1) "personal service [ ] through the appropriate court in the foreign country with the assistance of the department of foreign affairs;"[250]

(2) "publication once in a newspaper of general circulation in [a] country where the defendant may be found *and* by serving a copy of the summons and the court order by registered mail at the last known address of the defendant;"[251]

(3) facsimile;[252]

(4) "electronic means with the prescribed proof of service [Section 21, Rule 14, as amended];"[253] or

(5) "such other means as the court, in its discretion, may direct."[254]

It is also important to note that pursuant to the Supreme Court's Administrative Order No. 251-2020, the Hague Service Convention on the Service Abroad of Judicial Documents in Civil and Commercial Matters may be applicable to the issuance of summons on foreign private juridical entities.[255]

The 2019 Amendments also cover a situation where summons must be served upon a defendant whose identity or whereabouts are not known.

> Section 16. *Service upon defendant whose identity or whereabouts are unknown*. — In any action where the defendant is designated as an unknown owner, or

248. *Id*. rule 14, § 14, para. 2. *See also* VILLANUEVA & VILLANUEVA-TIANSAY, *supra* note 245, at 813.

249. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 14, § 14, para. 2.

250. *Id*. rule 14, § 14 (a).

251. *Id*. rule 14, § 14 (b).

252. *Id*. rule 14, § 14 (c).

253. *Id*. rule 14, § 14 (d).

254. *Id*. rule 14, § 14 (e).

255. *See* SC A.O. No. 251-2020, ¶ I (2) & Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters arts. 15-16, *signed* Nov. 15, 1965, 658 U.N.T.S. 163.

> the like, or whenever his *or her* whereabouts are unknown and cannot be ascertained by diligent inquiry, *within ninety (90) calendar days from the commencement of the action,* service may, by leave of court, be effected upon him *or her* by publication in a newspaper of general circulation and in such places and for such time as the court may order.
>
> *Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) calendar days after notice, within which the defendant must answer.*[256]

The amended provision adds a period of 90 days from the commencement of the action to ascertain the whereabouts of a defendant before one may ask the court to serve summons by publication.[257] Under the old provision, there was no indication of any period, but only that a "diligent inquiry" be made.[258]

In the order granting leave to serve summons by publication, the court shall specify a reasonable time for the defendant to answer.[259] This period shall not be less than 60 days.[260] Under the old provision, no period was stated, as the period was up to the court's discretion entirely.[261]

Amendments have likewise been made to the Rule on the return of summons —

> Section 20. *Return. — Within thirty (30) calendar days from issuance of summons by the clerk of court and receipt thereof, the sheriff or process server, or person authorized by the court, shall complete its service. Within five (5) calendar days from service of summons, the server shall file with the court and serve a copy of the return to the plaintiff's counsel, personally, by registered mail, or by electronic means authorized by the Rules.*
>
> *Should substituted service have been effected, the return shall state the following:*
>
> (1) *The impossibility of prompt personal service within a period of thirty (30) calendar days from issue and receipt of summons*;
>
> (2) *The date and time of the three (3) attempts on at least (2) two different dates to cause personal service and the details of the inquiries made to locate the defendant residing thereat*; *and*

256. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 14, § 16.

257. *Id.* rule 14, § 16, para. 2.

258. 1997 RULES OF CIVIL PROCEDURE, rule 14, § 14 (superseded in 2019).

259. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 14, § 16, para. 2.

260. *Id.*

261. 1997 RULES OF CIVIL PROCEDURE, rule 14, § 14 (superseded in 2019).

> (3) *The name of the person at least eighteen (18) years of age and of sufficient discretion residing thereat, name of competent person in charge of the defendant's office or regular place of business, or name of the officer of the homeowners' association or condominium corporation[,] or its chief security officer in charge of the community or building where the defendant may be found.*[262]

While it has always been the duty of the person who is tasked to serve summons — sheriff, process server, or person authorized by the court to serve summons — to complete the service of summons, the provision now requires that the service of summons be completed within 30 calendar days from the issuance of summons and receipt thereof.[263] The period within which the server shall file and serve a return remains to be five days from serving the summons.[264]

The present provision states the contents of the return in case substituted service is the mode of service employed, which include the following:

> (1) The impossibility of prompt personal service within a period of [ ]30[ ] calendar days from issue and receipt of summons;
>
> (2) The date and time of the three [ ] attempts on at least two [separate] dates to cause personal service and the details of the inquiries made to locate defendant residing thereat; and
>
> (3) The name of the person [upon whom service of summons was made].[265]

A second paragraph has been added to the Section on proof of service of summons, with particular regard to that done by electronic mail, which is now allowed under the Rules.[266]

> Section 21. *Proof of service.* — The proof of service of a summons shall be made in writing by the server and shall set forth the manner, place, and date of service; shall specify any papers which have been served with the process and the name of the person who received the same; and shall be sworn to when made by a person other than a sheriff or his *or her* deputy.

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262. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 14, § 20.

263. *Id.* rule 14, § 20, para. 1.

264. *Id.*

265. *Id.* rule 14, § 20, para. 2 (1)-(3).

266. *Id.* rule 14, § 21, para. 2.

> *If summons was served by electronic mail, a printout of said e-mail, with a copy of the summons as served, and the affidavit of the person mailing, shall constitute as proof of service.*[267]

In order to prove service of summons by electronic mail, it is required that a print-out of the e-mail be shown, "with a copy of the summons as served," [268] as well as an affidavit of the person who sent the mail electronically.[269]

VII. RULE 15: MOTIONS

The Rule on Motions has been substantially changed. It will be recalled that the Rules required that motions be set for hearing and how it is the movant's duty to do so.[270] In fact, the Rule was quite strict that, in one case, the Supreme Court ruled that "[t]he fact that the [trial court] took cognizance of a defective motion, such as requiring the parties to set it for hearing and denying the same for lack of merit, did not cure the defect of said motion."[271]

The 2019 Amendments now remove the requirement that motions be set for hearing, which substantially shortens the process.

> Section 2. *Motions must be in writing.* — All motions shall be in writing except those made in open court or in the course of a hearing or trial.
>
> *A motion made in open court or in the course of a hearing or trial should immediately be resolved in open court, after the adverse party is given the opportunity to argue his or her opposition thereto.*

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267. *Id.* rule 14, § 21.

268. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 14, § 21, para. 2.

269. *Id.*

270. 1997 RULES OF CIVIL PROCEDURE, rule 15, § 4, para. 1 (superseded in 2019).

271. Camarines Sur IV Electric Cooperative, Inc. v. Aquino, G.R. No. 167691, 566 SCRA 263, 270-71 (2008) (citing Garcia v. Sandiganbayan, G.R. No. 167103, 500 SCRA 631, 640 (2006) (citing Andrada v. Court of Appeals, G.R. No. L-31791, 60 SCRA 379, 382 (1974))) & Pojas v. Gozo-Dalole, G.R. No. 76519, 192 SCRA 575, 578 (1990) (citing Filipinas Fabricators & Sales, Inc. v. Magsino, G.R. No. L-47574, 157 SCRA 469, 475 (1988)).

> *When a motion is based on facts not appearing on record, the court may hear the matter on affidavits or depositions presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.*[272]

Additionally, the 2019 Amendments enumerate both litigious and non-litigious motions as follows —

> Section 4. *Non-litigious motions. — Motions which the court may act upon without prejudicing the rights of adverse parties are non-litigious motions. These motions include*:
>
> (a) *Motion for the issuance of an alias summons*;
>
> (b) *Motion for extension to file answer*;
>
> (c) *Motion for postponement*;
>
> (d) *Motion for the issuance of a writ of execution*;
>
> (e) *Motion for the issuance of an alias writ of execution*;
>
> (f) *Motion for the issuance of a writ of possession*;
>
> (g) *Motion for the issuance of an order directing the sheriff to execute the final certificate of sale*; *and*
>
> (h) *Other similar motions*.
>
> *These motions shall not be set for hearing and shall be resolved by the court within five (5) calendar days from receipt thereof.*
>
> Section 5. *Litigious motions*. — (a) *Litigious motions include*:
>
> (1) *Motion for bill of particulars*;

272. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 15, § 2. The proposed amendment deals with motions in open court or during hearing, which should be immediately resolved in open court. As to why oral motions "should be immediately resolved in open court," it was said that the provision should be mandatory in order to avoid delay, and that the judge will be taught later on his or her succeeding steps in case additional evidence is required to be presented. As to what should be done if there are motions that require further submission from the parties, it was stated that the judge can reset the hearing. For instance, in case of a conditional examination of a witness, the judge can allow the presentation of the witness during the next hearing. It was also observed that in cases of motion for reconsideration, the judge will set it for hearing and direct the adverse party to file a comment or opposition within so many days. It was noted that the judge should already let the parties argue on the motion and make a ruling thereon to avoid delay. *See id.*

(2) *Motion to dismiss*;

(3) *Motion for new trial*;

(4) *Motion for reconsideration*;

(5) *Motion for execution pending appeal*;

(6) *Motion to amend after a responsive pleading has been filed*;

(7) *Motion to cancel statutory lien*;

(8) *Motion for an order to break in or for a writ of demolition*;

(9) *Motion for intervention*;

(10) *Motion for judgment on the pleadings*;

(11) *Motion for summary judgment*;

(12) *Demurrer to evidence*;

(13) *Motion to declare defendant in default*; *and*

(14) *Other similar motions*.

(b) *All motions shall be served by personal service, accredited private courier*[,] *or registered mail, or electronic means so as to ensure their receipt by the other party*.

(c) *The opposing party shall file his or her opposition to a litigious motion within five (5) calendar days from receipt thereof. No other submissions shall be considered by the court in the resolution of the motion*.

The motion shall be resolved by the court within fifteen (15) calendar days from its receipt of the opposition thereto, or upon expiration of the period to file such opposition.

Section 6. *Notice of hearing on litigious motions; discretionary. — The court may, in the exercise of its discretion, and if deemed necessary for its resolution, call a hearing on the motion*. The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing.[273]

The Rules can be simplified as follows:

(1) Non-litigious motions are not set for hearing and must be resolved by the court within five days from receipt of the motion, without need of any refuting pleading from the opposing party.[274]

(2) Litigious motions are also not set for hearing, but "[t]he opposing party [may] file his or her opposition ... within five (5) calendar days from receipt thereof. No other submissions shall be

273. *Id*. rule 15, §§ 4-6.

274. *Id*. rule 15, § 4, para. 2.

> considered by the court in the resolution of the motion."[275] "The motion shall [then] be resolved by the court within fifteen (15) calendar days from its receipt of the opposition thereto, or upon expiration of the period to file such opposition."[276] Note that a litigious motion may be set for hearing by the court itself. It is submitted that after the hearing, the court will then have to resolve the matter within 15 days.

The Amendments expedite the process for resolution of motions. The procedure described above completely changes the previous practice of the movants having to set their motions for hearing,[277] as well as the practice where the parties are just given time to file written pleadings in connection with the motion at the motion hearing.[278]

Consistent with the effort to reduce the causes of delay,[279] the 2019 Amendments enumerate the following prohibited motions:

(a) Motion to dismiss[280] except for the following grounds:

  (1) Court has no jurisdiction over the subject matter of the claim;[281]

  (2) *Litis pendentia*;[282]

  (3) *Res judicata*;[283]

  (4) Prescription;[284]

(b) Motion to hear affirmative defenses;[285]

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275. *Id.* rule 15, § 5 (c).

276. *Id.*

277. 1997 RULES OF CIVIL PROCEDURE, rule 15, § 4 (superseded in 2019).

278. *Id.* rule 13, § 4.

279. Cajucom, et al., *supra* note 85, at 66.

280. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 15, § 12 (a).

281. *Id.* rule 15, § 12 (a) (1).

282. *Id.* rule 15, § 12 (a) (2).

283. *Id.* rule 15, § 12 (a) (3).

284. *Id.*

285. *Id.* rule 15, § 12 (b).

(c) Motion for reconsideration of the court's action on the affirmative defenses;[286]

(d) Motion to suspend proceedings without a temporary restraining order or injunction issued by a higher court;[287]

(e) Motion for extension of time to file pleadings, affidavits, or any other papers except one (1) motion for extension of time to file answer;[288]

(f) Motion for postponement intended for delay,[289] except:

(1) Acts of God (hurricane, flood, earthquake, volcanic eruption, etc.);[290]

(2) Force majeure, extraordinary event, or circumstance beyond the control of the parties, such as a war, strike, riot, crime, plague, virus or[,] an event described by the legal term act of God (hurricane, flood, earthquake, volcanic eruption, etc.);[291] and

(3) Physical inability of the witness to appear and testify.[292]

VIII. DISMISSALS

The 2019 Amendments deleted the previous Rule 16 on Motion to Dismiss,[293] but this does not mean that a Motion to Dismiss is completely prohibited.[294] Motions to Dismiss may still be filed, but only on the following grounds:

286. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 15, § 12 (c).

287. *Id.* rule 15, § 12 (d).

288. *Id.* rule 15, § 12 (e).

289. *Id.* rule 15, § 12 (f).

290. *Id.*

291. *Id.*

292. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 15, § 12 (f).

293. Cajucom, et al., *supra* note 85, at 71 (citing 1997 RULES OF CIVIL PROCEDURE, rule 16).

294. *Id.*

(1) Court has no jurisdiction over the subject matter of the claim;[295]

(2) *Litis pendentia*;[296]

(3) *Res judicata*;[297] and

(4) Prescription.[298]

Thus, a defendant may still file a Motion to Dismiss under the foregoing grounds, and since it is a litigious motion, the procedure in Sections 5 and 6 of Rule 15 applies.[299]

The other grounds to dismiss that were previously available can now be raised only by way of affirmative defenses in the Answer.[300] What follows is a summary of the rules on dismissal found in Rule 6, Section 5 (b) and Rule 8, Section 12.

The Grounds to Dismiss may be grouped together as follows:

Group 1: Rule 6, Section 5 (b) (1)

(1) Fraud;[301]

(2) Statute of Limitations (Prescription);[302]

(3) Release;[303]

(4) Payment;[304]

(5) Illegality;[305]

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295. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 15, § 12 (a) (1).

296. *Id.* rule 15, § 12 (a) (2).

297. *Id.* rule 15, § 12 (a) (3).

298. *Id.*

299. *Id.* rule 15, §§ 5-6.

300. *Id.* rule 6, § 5 (b).

301. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 6, § 5 (b).

302. *Id.*

303. *Id.*

304. *Id.*

305. *Id.*

(6) Statute of Frauds;[306]

(7) Estoppel;[307]

(8) Former recovery;[308]

(9) Discharge in bankruptcy;[309] and

(10) Any other matter by way of confession and avoidance.[310]

For any of the foregoing grounds raised as affirmative defenses, the court may, "within [ ]30[ ] calendar days from the filing of the answer[,]"[311] resolve the said defenses[312] or "conduct a summary hearing within [ ]15[ ] calendar days from the [receipt] of the answer[,]"[313] and the court must resolve the issue "within [ ]30[ ] calendar days from the termination of the summary hearing."[314]

Group 2: Rule 6, Section 5 (b) (2)

(1) No jurisdiction over the subject matter;[315]

(2) *Litis pendentia*;[316] and

(3) *Res judicata*.[317]

Group 3: Rule 8, Section 12 (a)

(1) Lack of jurisdiction over person of the defendant;[318]

---

306. *Id.*

307. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 6, § 5 (b).

308. *Id.*

309. *Id.*

310. *Id.*

311. *Id.* rule 8, § 12 (c).

312. *Id.*

313. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 8, § 12 (d).

314. *Id.*

315. *Id.* rule 6, § 5 (b).

316. *Id.*

317. *Id.*

318. *Id.* rule 8, § 12 (a) (1).

(2) Venue improperly laid;[319]

(3) Lack of capacity to sue;[320]

(4) Failure to state a cause of action;[321] and

(5) Failure to comply with condition precedent.[322]

For the grounds stated above, Rule 8, Section 12 (c), as amended, requires the court to "motu proprio resolve the [following] affirmative defenses [(Groups 2 and Group 3)] within [ ]30[ ] calendar days from the filing of the answer."[323]

Below is a summary of the foregoing affirmative defenses:

Rule 6, § 5 (b) (1)	Rule 6, § 5 (b) (2)	Rule 8, § 12
(1) Fraud (2) Statute of Limitations (Prescription) (3) Release (4) Payment (5) Illegality (6) Statute of Frauds (7) Estoppel (8) Former Recovery (9) Discharge in Bankruptcy	(1) No jurisdiction over the subject matter (2) *Res judicata* (3) *Litis pendentia*	(1) Lack of jurisdiction over the person of the defendant (2) Venue is improperly laid (3) Failure to state a cause of action (4) Failure to comply with condition precedent

319. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 8, § 12 (a) (2).

320. *Id.* rule 8, § 12 (a) (3).

321. *Id.* rule 8, § 12 (a) (4).

322. *Id.* rule 8, § 12 (a) (5).

323. *Id.* rule 8, § 12 (c).

(10) Any other matter by way of confession and avoidance		
Court must resolve within *30 calendar days*.[324]		
Or, the court may conduct a *summary hearing* within *15 calendar days*. The Court must resolve within *30 calendar days* from the termination of the summary hearing.[325]		

Note also, that these grounds to dismiss must be raised in the affirmative defenses in the Answer at the earliest possible time.[326] Otherwise, except for the grounds in Group 2 *and* prescription,[327] they are deemed waived under Rule 9, Section 1, as amended.[328]

Finally, note that under Rule 8, Section 12 (e), as amended, the denial of all the affirmative defenses cannot be the subject of a motion for reconsideration, petition for certiorari, prohibition, or mandamus.[329] The remedy is to raise it as an issue on appeal after judgment on the merits.[330]

Rule 8, Section 12 is quoted hereunder for reference —

> Section 12. *Affirmative defenses.* — (a) *A defendant shall raise his or her affirmative defenses in his or her answer, which shall be limited to the reasons set forth under Section 5 (b), Rule 6, and the following grounds*:

---

324. *Id.*

325. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 8, § 12 (d).

326. *Id.* rule 8, § 12 (b).

327. *See id.* rule 8, §§ 12 (a)-(b).

328. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 9, § 1.

329. *Id.* rule 8, § 12 (e).

330. *Id.*

(1) *That the court has no jurisdiction over the person of the defending party*;

(2) *That venue is improperly laid*;

(3) *That the plaintiff has no legal capacity to sue*;

(4) *That the pleading asserting the claim states no cause of action*; *and*

(5) *That a condition precedent for filing the claim has not been complied with.*

(b) *Failure to raise the affirmative defenses at the earliest opportunity shall constitute a waiver thereof.*

(c) *The court shall motu proprio resolve the above affirmative defenses within thirty (30) calendar days from the filing of the answer.*

(d) *As to the other affirmative defenses under the first paragraph of Section 5 (b), Rule 6, the court may conduct a summary hearing within fifteen (15) calendar days from the filing of the answer. Such affirmative defenses shall be resolved by the court within thirty (30) calendar days from the termination of the summary hearing.*

(e) *Affirmative defenses, if denied, shall not be the subject of a motion for reconsideration or petition for certiorari, prohibition*[,] *or mandamus, but may be among the matters to be raised on appeal after a judgment on the merits.*[331]

Finally, Rule 15, Section 13 states the grounds for dismissal which, if granted, will bar the refiling of the case:

(1) *Res judicata*;[332]

(2) Prescription;[333]

(3) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;[334] or

(4) That the claim on which the action is founded is unenforceable under the Statute of Frauds.[335]

331. *Id.* rule 8, § 12.

332. *Id.* rule 15, § 13.

333. *Id.*

334. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 15, § 13.

335. *Id.*

IX. RULE 18: PRE-TRIAL

In *Bank of the Philippine Islands v. Genuino*,[336] the Court said that "[p]re[-]trial promotes efficiency of case proceedings by allowing the parties to stipulate on facts and admissions that no longer need proof, and to agree on key issues, among others. It protects the right to speedy trial without compromising substantive justice."[337] The 2019 Amendments provide —

> Section 1. When conducted. — After the last *responsive* pleading has been served and filed, *the branch clerk of court shall issue, within five (5) calendar days from filing, a notice of pre-trial which shall be set not later than sixty (60) calendar days from the filing of the last responsive pleading.*[338]

Rule 18, Section 1 has been amended by making it the duty of the clerk of court to issue a notice of pre-trial after the last responsive pleading has been served and filed.[339] Under the old rules, it was the duty of the plaintiff to file a motion to set the case for pre-trial after the last pleading had been filed.[340]

The amended Section also added the requirement that the pre-trial should be set not later than 60 calendar days from the filing of the last responsive pleading.[341]

Amendments have likewise been made to Section 2 of the same Rule —

> Section 2. Nature and Purpose. — The pre-trial is mandatory *and should be terminated promptly*. The court shall 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 possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;
>
> (d) The limitation of the number *and identification* of witnesses *and the setting of trial dates*;

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336. Bank of the Philippine Islands v. Genuino, G.R. No. 208792, 763 SCRA 604 (2015).

337. *Id.* at 618.

338. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 18, § 1.

339. *Id.*

340. 1997 RULES OF CIVIL PROCEDURE, rule 18, § 1 (superseded in 2019).

341. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 18, § 1.

(e) The advisability of a preliminary reference of issues to a commissioner;

(f) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist;

(g) *The requirement for the parties to*:

(1) *Mark their respective evidence if not yet marked in the judicial affidavits of their witnesses*;

(2) *Examine and make comparisons of the adverse parties' evidence* vis-a-vis *the copies to be marked*;

(3) *Manifest for the record stipulations regarding the faithfulness of the reproductions and the genuineness and due execution of the adverse parties' evidence*;

(4) *Reserve evidence not available at the pre-trial, but only in the following manner*:

(i) *For testimonial evidence, by giving the name or position and the nature of the testimony of the proposed witness*; [*and*]

(ii) *For documentary evidence and other object evidence, by giving a particular description of the evidence*.

No reservation shall be allowed if not made in the manner described above.

(h) Such other matters as may aid in the prompt disposition of the action.

The failure without just cause of a party and counsel to appear during pre-trial, despite notice, shall result in a waiver of any objections to the faithfulness of the reproductions marked, or their genuineness and due execution.

The failure without just cause of a party and/or counsel to bring the evidence required shall be deemed a waiver of the presentation of such evidence.

The branch clerk of court shall prepare the minutes of the pre-trial ... .[342]

Rule 18, Section 2 of the Rules of Court, as amended, begins with a reminder that pre-trial is mandatory, with the additional reminder that it should be terminated promptly.[343] The Rule has also been amended to add

342. *Id*. rule 18, § 2.

343. *Id*.

matters that the court should consider.[344] Under the amended Section, it is now required that not only the number of witnesses be considered, but also the identification of the witnesses, and setting of the trial dates.[345] The court should also consider the requirement of parties to mark evidence, if not already marked in the judicial affidavits of their witnesses.[346] Additionally, it now states that examination and comparisons of opposing parties' evidence with the copies marked shall take place during the pre-trial.[347]

An important amendment is Section 2 (g) (4) on reserving evidence which may not be available at pre-trial.[348] As regards making a reservation for testimonial evidence, it is required that the name or position of the witness and the nature of the proposed testimony be stated.[349] With regard to documentary evidence and other object evidence, it is required that a particular description of the evidence be given.[350]

Another notable amendment is the sanction for failure to appear at pre-trial by the party and counsel.[351] Such failure to appear constitutes "a waiver of any objections to the faithfulness of the reproductions marked, or their genuineness and due execution."[352] Rule 18, Section 2, as amended, also states that failure to bring the required evidence to pre-trial will be "deemed a waiver of the presentation of such evidence."[353]

Section 3 of the Rule on Pre-Trial has also been amended as follows —

> Section 3. Notice of pre-trial. — *The notice of pre-trial shall include the dates respectively set for*:
>
> (1) *Pre-trial;*
>
> (2) *Court-Annexed Mediation; and*

344. *Id.*

345. *Id.* rule 18, § 2 (d).

346. *Id.* rule 18, § 2 (g) (1).

347. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 18, § 2 (g) (2).

348. *Id.* rule 18, § 2 (g) (4).

349. *Id.* rule 18, § 2 (g) (4) (i).

350. *Id.* rule 18, § 2 (g) (4) (ii).

351. *Id.* rule 18, § 2.

352. *Id.*

353. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 18, § 2.

(3) *Judicial Dispute Resolution, if necessary*.

The notice of pre-trial shall be served on counsel, or on the party if he *or she* has no counsel. The counsel served with such notice is charged with the duty of notifying the party represented by him *or her*.

Non-appearance at any of the foregoing settings shall be deemed as non-appearance at the pre-trial and shall merit the same sanctions under Section 5 hereof.[354]

The amendment to Rule 18, Section 3 of the Rules of Court is meant to incorporate the other forms of dispute resolution which must be mandatorily complied with before proceeding to trial.[355] Thus, the notice of pre-trial must now include settings not only for pre-trial, but also for the court-annexed mediation and judicial dispute resolution.[356] Failure to appear on any of the settings is considered failure to appear at pre-trial and merits the same sanctions stated in Section 5 of Rule 18, as amended.[357]

Where the appearance at the pre-trial is concerned —

Section 4. *Appearance of parties*. — It shall be the duty of the parties and their counsel to appear at the pre-trial, *court-annexed mediation, and judicial dispute resolution, if necessary. The non-appearance of a party and counsel may be excused only for acts of God, force majeure, or duly substantiated physical inability*.

A representative may appear on behalf of a party, but must be fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and documents.[358]

Rule 18, Section 4 of the Rules of Court, as amended, states that parties *and* counsel must appear at pre-trial, court-annexed mediation, and judicial dispute resolution.[359] The Section provides that the only grounds to excuse non-appearance are "acts of God, *force majeure*, or duly substantiated physical inability."[360]

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354. *Id.* rule 18, § 3.

355. *Id.* rule 18, §§ 3 (b)-(c).

356. *Id.*

357. *Id.*

358. *Id.* rule 18, § 4.

359. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 18, § 4, para. 1.

360. *Id.*

The 2019 Amendments also cover the failure to appear —

> Section 5. *Effect of failure to appear. — When duly notified,* the failure of the plaintiff *and counsel* to appear *without valid cause* when so required, pursuant to the next preceding Section, shall cause the dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant *and counsel* shall be cause to allow the plaintiff to present his *or her* evidence *ex parte within ten (10) calendar days from termination of the pre-trial,* and the court to render judgment on the basis *of the evidence offered*.[361]

This Rule appears to abandon the Court's ruling in *Paredes v. Verano*,[362] where the Court ruled that "nothing in the Rules of Court authorizes a trial judge to allow the plaintiff to present evidence *ex parte* on account of the absence during pre-trial of the *counsel* for defendant."[363] The Court also explained that

> [t]he provision also provides for the instances where the non-appearance of a party may be excused. *Nothing, however, in Section 4 provides for a sanction should the parties or their respective counsel be absent during pre-trial.* Instead, the penalty is provided for in Section 5. *Notably, what Section 5 penalizes is the failure to appear of either the plaintiff or the defendant, and not their respective counsel.*[364]

Rule 18, Section 5, now requires that *both* the party and counsel must appear at pre-trial.[365] In case of non-appearance of plaintiff and counsel, the case will be dismissed with prejudice, unless ordered by the court, and in case of non-appearance of defendant and counsel, the plaintiff will be allowed to present his evidence *ex parte*.[366]

Amendments have also been made to the contents of both the pre-trial brief and pre-trial order —

> Section 6. *Pre-trial brief.* — The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) *calendar* days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

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361. *Id.* rule 18, § 5.

362. Paredes v. Verano, G.R. No. 164375, 504 SCRA 264 (2006).

363. *Id.* at 274 (emphasis supplied).

364. *Id.* at 275 (emphases supplied).

365. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 18, § 5.

366. *Id.*

(a) *A concise statement of the case and the reliefs prayed for;*

(b) A summary of admitted facts and proposed stipulation of facts;

(c) *The main factual and legal* issues to be tried or resolved*;*

(d) *The propriety of referral of factual issues to commissioners;*

(e) The documents *or other object evidence to be marked,* stating the purpose thereof;

(f) *The names of the witnesses,* and the *summary* of their respective testimonies; *and*

(g) *A brief statement of points of law and citation of authorities.*

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

Section 7. *Pre-Trial Order. — Upon termination of the pre-trial, the court shall issue an order within ten (10) calendar* days which shall recite in detail the matters taken up. *The order shall include:*

(a) *An enumeration of the admitted facts;*

(b) *The minutes of the pre-trial conference;*

(c) *The legal and factual issue/s to be tried;*

(d) *The applicable law, rules, and jurisprudence;*

(e) *The evidence marked;*

(f) *The specific trial dates for continuous trial, which shall be within the period provided by the Rules;*

(g) *The case flowchart to be determined by the court, which shall contain the different stages of the proceedings up to the promulgation of the decision and the use of time frames for each stage in setting the trial dates;*

(h) *A statement that the one-day examination of witness rule and most important witness rule under A.M. No. 03-1-09-SC (Guidelines for Pre-Trial) shall be strictly followed; and*

(i) *A statement that the court shall render judgment on the pleadings or summary judgment, as the case may be.*

The direct testimony of witnesses for the plaintiff shall be in the form of judicial affidavits. After the identification of such affidavits, cross-examination shall proceed immediately.

Postponement of presentation of the parties' witnesses at a scheduled date is prohibited, except if it is based on acts of God, force majeure, or duly substantiated physical

> *inability of the witness to appear and testify. The party who caused the postponement is warned that the presentation of its evidence must still be terminated within the remaining dates previously agreed upon.*
>
> *Should the opposing party fail to appear without valid cause stated in the next preceding paragraph, the presentation of the scheduled witness will proceed with the absent party being deemed to have waived the right to interpose objection and conduct cross-examination.*
>
> *The contents of the pre-trial order shall control the subsequent proceedings, unless modified before trial to prevent manifest injustice.*[367]

Court-annexed mediation is also provided for under the 2019 Amendments — "*After pre-trial and, after issues are joined, the court shall refer the parties for mandatory court-annexed mediation. The period for court-annexed mediation shall not exceed thirty (30) calendar days without further extension.*"[368]

Under Rule 18, Section 8, the court is directed to refer the parties to court-annexed mediation after pre-trial.[369] The last paragraphs of Sections 7 and 8 of Rule 18 are a reminder that court-annexed mediation must not exceed 30 days, with no extension being allowed.[370]

Where judicial dispute resolution is concerned, the amendments provide —

> Section 9. *Judicial Dispute Resolution. — Only if the judge of the court to which the case was originally raffled is convinced that settlement is still possible, the case may be referred to another court for judicial dispute resolution. The judicial dispute resolution shall be conducted within a non-extendible period of fifteen (15) calendar days from notice of failure of the court-annexed mediation.*
>
> *If judicial dispute resolution fails, trial before the original court shall proceed on the dates agreed upon.*
>
> *All proceedings during the court-annexed mediation and the judicial dispute resolution shall be confidential.*[371]

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367. *Id.* rule 18, §§ 6-7.

368. *Id.* rule 18, § 8.

369. *Id.*

370. *Id.* rule 18, §§ 7-8.

371. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 18, § 9.

Under Rule 18, Section 9, judicial dispute resolution is only resorted to when the following requisites are present:

(1) the judge to whom the "case was originally raffled is convinced that settlement is still possible;"[372]

(2) the judicial dispute resolution is done by another court;[373] and

(3) it is done "within a non-extendible period of fifteen (15) calendar days from notice of failure of the court-annexed mediation."[374]

Note that if judicial dispute resolution fails, trial shall proceed before the original court.[375] Before the amendment, judicial dispute resolution was conducted by the court to which the case was originally raffled, and if there was no settlement, the case would be re-raffled to another branch.[376] The time for a re-raffle and study of the case by a new judge may cause delay, which has now been addressed by the amendment.

Amendments have been made with respect to judgment to be rendered after pre-trial —

> Section 10. *Judgment after pre-trial. — Should there be no more controverted facts, or no more genuine issue as to any material fact, or an absence of any issue, or should the answer fail to tender an issue, the court shall, without prejudice to a party moving for judgment on the pleadings under Rule 34 or summary judgment under Rule 35, motu proprio include in the pre-trial order that the case be submitted for summary judgment or judgment on the pleadings, without need of position papers or memoranda. In such cases, judgment shall be rendered within ninety (90) calendar days from termination of the pre-trial.*
>
> *The order of the court to submit the case for judgment pursuant to this Rule shall not be the subject to appeal or certiorari.*[377]

In addition to the contents of the pre-trial order stated in Section 7 of Rule 18, Section 10 requires the court to include in the pre-trial order that

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372. *Id.* rule 18, § 9, para. 1.

373. *Id.*

374. *Id.*

375. *Id.* rule 18, § 9, para. 2.

376. Re: Consolidated and Revised Guidelines to Implement the Expanded Coverage of Court-Annexed Mediation [CAM] and Judicial Dispute Resolution [JDR], A.M. No. 11-1-6-SC-PHILJA, pt. 3 (Jan. 11, 2011).

377. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 18, § 10.

the case be submitted for summary judgment or judgment on the pleadings when:

(1) there are no more controverted facts;[378]

(2) no more genuine issue as to any material fact;[379]

(3) absence of any issue;[380] or

(4) the Answer fails to tender an issue.[381]

This inclusion may be done *motu proprio* by the court, or a party may move for judgment on the pleadings or for summary judgment.[382] If the court decides to submit the case for judgment on the pleadings or summary judgment, judgment must be rendered within 90 days from the termination of the pre-trial,[383] and the decision to submit the case for judgment on the pleadings or summary judgment may not be the subject of appeal or *certiorari*.[384]

X. RULES 33, 34, AND 35

The amendment to Section 2, Rule 33 provides that "[*a*] *demurrer to evidence shall be subject to the provisions of Rule 15. The order denying the demurrer to evidence shall not be subject of an appeal or petition for certiorari, prohibition*[,] *or mandamus before judgment*."[385]

To recall, under Rule 15, Section 5, as amended, a demurrer to evidence is a litigious motion.[386] Considering, however, that a motion hearing is no longer required, the opposing party will have only a five-day period to file his comment or opposition to the demurrer to evidence, unless the court sets it for a hearing.[387] The provision also says that if the demurrer is denied, it

378. *Id.* rule 18, § 10, para. 1.

379. *Id.*

380. *Id.*

381. *Id.*

382. *Id.*

383. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 18, § 10, para. 1.

384. *Id.* rule 18, § 10, para. 2.

385. *Id.* rule 33, § 2, para. 2.

386. *Id.* rule 15, § 5 (12).

387. *Id.* rule 15, § 5 (c).

cannot be appealed nor be the subject of a petition for certiorari, prohibition, or mandamus before judgment.[388]

Similar to the Rule on Demurrer to Evidence, a motion for judgment on the pleadings or motion for summary judgment shall be subject to the provisions of Rule 15,[389] although for judgment on the pleadings, Rule 34, Section 2 states that "if it is apparent that the answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleadings[,]" the court may *motu proprio* render judgment on the pleadings.[390]

With respect to summary judgments, it will be recalled that the old Rule provided for different periods for their filing, viz. —

> Section 3. *Motion and Proceedings Thereon*. – The motion shall be served at least ten (10) days before the time specified for the hearing. The adverse party may serve opposing affidavits, depositions, or admissions at least three (3) days before the hearing. After the hearing, the judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions, and admissions on file, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.[391]

The rule on summary judgments is now amended to make it consistent with the periods stated in Rule 15 —

> Section 3. *Motion and proceedings thereon. — The motion shall cite the supporting affidavits, depositions or admissions, and the specific law relied upon. The adverse party may file a comment and serve opposing affidavits, depositions, or admissions within a non-extendible period of five (5) calendar days from receipt of the motion. Unless the court orders the conduct of a hearing,* judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions[,] and admissions on file, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.
>
> *Any action of the court on a motion for summary judgment shall not be subject of an appeal or petition for certiorari, prohibition*[,] *or mandamus.*[392]

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388. *Id.* rule 33, § 2, para 2.

389. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 34, § 2, para. 2.

390. *Id.*

391. 1997 RULES OF CIVIL PROCEDURE, rule 35, § 3 (superseded in 2019).

392. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 35, § 3.

Similar to the Rule on Demurrer to Evidence, any action of the court on a motion for judgment on the pleadings or summary judgment shall not be subject of an appeal or petition for certiorari, prohibition, or mandamus.[393] This provision should be read as a prohibition to challenge the court's resolution on the propriety of adopting the mode of accelerated judgment and not as a prohibition to appeal the judgment eventually rendered.

XI. CONCLUSION

The 2019 Amendments were clearly intended to expedite the litigation process, which has been often criticized as jurassic. The changes evince a serious effort on the part of the Supreme Court to reduce the usual causes of delay and incorporate advances in technology. There are adjustments to be made in the practice, for sure, and it is hoped that the efforts towards promptness will not prejudice the full litigation of contested facts.

It will also be noted that the amendments are substantial, yet incomplete. The Amendments notably did not revise the provisions on causes of action and their joinder, parties, venue, and execution of judgments. There are many possible sources of delay in these Rules which must also be addressed. It is hoped that not only will there be a further review of the Rules in the near future, but there must also be a continuing review of these newly implemented Rules in order to determine whether they have achieved their desired objectives.

393. *Id.* rule 34, § 2, para. 2 & rule 35, § 3, para. 2.