The Judicial Affidavit Rule

Justice Roberto A. Abad[*]

I. INTRODUCTION

Studies show that 75% of our people live in crowded cities.[1] Consequently, the occasions for human conflict are inevitable. Thus, the records show

---

[*] '68 L.L.B., Ateneo de Manila University School of Law. The Author is currently an Associate Justice of the Supreme Court (SC) of the Philippines. He serves as Chairman of various SC Committees, including the Sub-Committee on Revision of Rules of Civil Procedure, Committee to Address Case Congestion and Delays in Lower Courts, Committee on Jail Decongestion, Committee on Internal Rules, and the Committee on Continuing Legal Education and Bar Matters. He was also the Chair of the 2011 Bar Examinations. Prior to assuming the position of an Associate Justice, he served as a Consultant for the Presidential Committee on Nuclear Power Plants under former Justice Secretary Sedfrey A. Ordoñez. He was also the Assistant Solicitor General in the Office of the Solicitor General from 1985 to 1986. He also served as the Dean of the University of Santo Tomas (UST) Faculty of Civil Law, where he taught Constitutional Law, Administrative Law, Election Law, Law on Public Corporations, and International Law. He also taught at the *Pamantasan ng Lungsod ng Maynila* and served as bar reviewer at the Ateneo de Manila University School of Law and the UST. The Author rendered free legal aid for the Free Legal Assistance Group, the Department of Social Welfare and Development, the Sisters of Charity for Our Lady of Perpetual Succor, and the Angels of Hope Orphanage. He is the author of PRACTICAL BOOK IN LEGAL WRITING (2002) and FUNDAMENTALS OF LEGAL WRITING (2004 and 2007 eds.). He gave a lecture called "The Impact of Substantive Changes in the Bar Examination on Philippine Legal Education" during the academic convocation entitled "Defining the New Paradigm of Legal Education in the Philippines" in

courts in these cities are drowning in cases. Many have over 1,000 cases; some have up to 2,000. Many courts hear around 30 to 60 cases a day. Courtrooms are often full. Parties have to wait outside to be called.

It takes three to five years — at times more — for cases to be fully heard and decided. A sense of hopelessness has spread throughout the Philippine justice system. Ridiculously long and repeated postponements worsen case congestion. Parties grab at almost any pretext to delay the proceedings. But there are many other contributing factors: our courts are few, our prosecutors and public attorneys continue to dwindle in number. The Supreme Court's hands are tied. We cannot increase the number of courts or influence the hiring of prosecutors or public attorneys. But we are empowered to earnestly examine our system for hearing and deciding cases to see if we can maximize our existing judges' capacity to dispose of cases.

Most complainants in criminal cases eventually give up coming to court and let go of any hopes for justice. As a result, 40 out of every 100 persons accused of crimes walk free.[2] Consequently, victims of crimes find no speedy justice in our courts.

The sense of hopelessness can no longer surprise us. Well known are the incidents of citizens driven to drastic actions because they have lost trust in the courts' ability to render justice. They either simply endure their pains or find "just" solutions elsewhere. They find ways to work around the system rather than with it. And when the justice system does not work as it should, law practice suffers.

In addition, few foreign businessmen make long-term investments in the country because our courts cannot provide protection for their investments.[3] As a result, we do not attain economic growth; our people remain poor.[4]

In a tripartite system of government, it is to the Judiciary that the people place their hopes at attaining justice in the disputes they face. Wielding the

---

November 2011. This Article expounds upon another lecture delivered throughout the Philippines in 2012.

Cite as 57 ATENEO L.J. 685 (2012).

1. UNICEF, United Nations Statement on the Responsible Parenthood, Reproductive Health and Population and Development Act Bill, *available at* www.unicef.org/philippines/mediacentre_19331.html (last accessed Nov. 15, 2012).
2. JUDICIAL AFFIDAVIT RULE, A.M. No. 12-8-8-SC, Sep. 4, 2012, whereas cl.
3. *Id.*
4. *Id.*

principal power to hear cases and settle actual controversies,[5] the courts remain accountable to the people in dispensing rightful justice. However, there can be no genuine justice if the people continue to struggle with an inaccessible judicial system due largely to the sheer plurality of cases that courts hear every day. No less than the 1987 Constitution guarantees the right of an individual to a speedy trial, and to a trial at the very least.[6]

II. BOTTLENECK IN THE WITNESS STAND

Who can be surprised at the delay in hearing cases when the fact that the system has remained the same from the time when lawyers needed to go on horseback to get to the courts is considered? There are many causes to the terrible delays in our justice system. Aside from the insufficient number of courts, personnel, prosecutors, and public attorneys, one of the major causes is our slow and cumbersome system for hearing the testimony of witnesses.

The witness stand represents the bottleneck in the judicial machinery. First, courts can hear no more than one witness at a given time. Assuming there are just two witnesses per case, 2,000 witnesses would be waiting to be called in courts that have 1,000 cases in their dockets. If required to form a line outside the courtroom, they would form a very long line indeed, with only three witnesses able to get in to testify in one day.

In addition, although about 90% of witnesses testify in the local dialect, the court requires an interpreter to translate their testimonies into English. Since the trial takes place in two languages, the court has to hear the testimony of every witness twice. Direct examinations often play out in this manner —

Question:	Do you know the defendant in this case?
Interpreter:	*Nakilala mo ba ang nasasakdal sa kasong ito?*
Answer:	*Opo.*
I.	Yes, sir.
Q.	Why do you know him?
I.	*Bakit mo siya nakilala?*
A.	*Kasi po ay nagbenta ako sa kanya ng isang 2008 na kotseng Toyota.*
I.	Because I sold him a 2008 Toyota car, sir.

The dynamic and rhythm of the court often seems comedic to observers. But there are other repercussions to this method of testifying. The interpretations often leave much lost. In fact, there are many instances when the interpreter's lack of proficiency in the English language results in a thoroughly inaccurate record of a witness' testimony. The Court is not

5. PHIL. CONST. art. VIII, § 1.

6. PHIL. CONST. art. III, §§ 14 (2) & 16.

standing idly by; many reforms are taking place to address these inefficiencies.

III. THE AMERICAN JUDICIARY: IDENTIFYING OBSTACLES IN PHILIPPINE APPLICATION

The root of these inefficiencies can be traced throughout the Philippines' history. It is as old as our system. How old is our system for hearing and deciding cases? The Americans gave it to us over a hundred years ago.[7] It was unique to their history and culture, yet we adopted it. Thus, we were taught in schools of law that there is no right way to hear the testimonies of witnesses except the American way.

The American system is adversarial.[8] The lawyers in a way control the proceedings since they decide what evidence the judge will hear.[9] Although he will decide the case, the judge is doomed to sit back and listen, allowed to ask only clarificatory questions from the witness.

The American system is also designed for both jury and bench trials.[10] In effect, by using their system, it is as if we have a shadow jury sitting in our courtroom. This is because the rules we adopted require our judge to pre-screen the questions in order to prevent an unlearned jury from hearing inadmissible answers. But this is pointless since the jury in our court is the judge himself. With his legal training and experience, he has no difficulty disregarding inadmissible answers even after he hears them.

Further, since it is assumed that the members of the American jury know nothing of the case, witnesses must tell their stories to the jurors from beginning to end. Following this system, our witnesses tell their stories to the judge from beginning to end although the latter already knows from the record the respective stories of the parties. Consequently, he can skip the admitted matters and have the witness focus on the facts in issue. But Section 4, Rule 132 of the Rules of Court,[11] which we borrowed from the Americans, requires the judge to endure beginning-to-end stories that are

7. *See* David G. Nitafan & Mario Guarina III, *The American Regime (1898-1946), in* THE HISTORY OF THE PHILIPPINE JUDICIARY 298-304 (1998). *See also* Anna Leah Fidelis T. Castañeda, *The Origins of Philippine Judicial Review, 1900-1935*, 46 ATENEO L.J. 121, 131-33 (2001).

8. DAVID W. NEUBAUER, AMERICA'S COURTS AND THE CRIMINAL JUSTICE SYSTEM 21-22 (2d ed.).

9. *Id.*

10. G. ALAN TARR, JUDICIAL PROCESS AND JUDICIAL POLICYMAKING 142-43 (4th ed. 2006).

11. REVISED RULES ON EVIDENCE, rule 132, § 4.

plucked from the witness' mouth bit by bit through direct examination.[12] This is a time consuming process.

Another cause of delay is the often indiscriminate objections to the questions asked of the witness. Theoretically, a lawyer objects to questions asked of the witness to enable the judge to predetermine if the expected answers are inadmissible in evidence. The judge must see to it that inadmissible answers do not touch the ears of the jury, lest these irreversibly influence the members of the jury. But we have no jury, only a judge.

Another point of delay is the need to identify, mark, and authenticate the exhibits.[13] The process is tedious and painfully time-consuming. Some courts require pre-markings of exhibits before the clerks of court but these personnel are often just as busy as the judge. And even with such pre-markings, still, the witness will have to appear before the court, identify the documents, and authenticate them.[14] If your witness is next in line and there are 20 more documents to identify, mark, and authenticate, you are doomed to wait very long.

In many courts in cities, the cases on their calendars often range from 30 to 50 cases. Just calling the attendance takes from 8:30 a.m. to 10 a.m. since there are incidents, like postponements, that must be acted on. This leaves only two hours for hearing the cases that are ready. If 10 cases are ready, the judge gives the parties in each case 12 minutes to present part of the testimony of just one witness.

With piecemeal trials, it takes more than a year to complete the testimony of just one witness. Even after the direct examination has been finished, it is usual for the lawyer of the adverse party to postpone his cross examination on the ground that *first*, he needs time to prepare since he must first have the transcript of stenographic notes of the direct examination and, *second*, he needs to check the truth of the testimony.

It is thus unsurprising why it takes three to five years, sometimes up to eight years, for the hearing in a case to end. How do we solve the problem?

---

12. *Id.* This Rule provides —

> Section 4. *Order in the examination of an individual witness.* — The order in which the individual witness may be examined is as follows:
>
> (a) Direct examination by the proponent;
>
> (b) Cross-examination by the opponent;
>
> (c) Re-direct examination by the proponent;
>
> (d) Re-cross-examination by the opponent.

Id.

13. *Id.* rule 132, § 20.

14. *Id.* rule 132, § 35.

The conventional solution is to streamline the existing system for hearing cases and pound hard on the judges to speed up their hearings. It is often said, however, that it is madness to do the same thing the same way and expect different results. The courts have endured over a century of an inefficient justice system yet with each change in leadership and personnel working the same system, the people have expected different results. Madness!

To end the cycle, the Supreme Court experimented on the compulsory use of judicial affidavits in all cases in Quezon City early in 2012.[15] The result was astounding — hearings of cases have been cut by two-thirds in those courts. Why two-thirds? The testimony of a witness usually consists of two-thirds direct examination and one-third cross-examination. With the judicial affidavit serving as direct testimony, the witness is examined in court only on cross-examination. Instead of one witness testifying for a certain amount of time, the court can now accommodate three witnesses in that same duration. Can you imagine that?

IV. AFFIDAVITS IN OTHER JURISDICTIONS

In other jurisdictions, the use of judicial affidavits is not new. In Australia, for instance, the exchange of the written statements and affidavits of witnesses has been common practice.[16] Specifically, the Uniform Civil Procedure Rules[17] allow the submission of either witness statements or affidavits to court.[18] As to witness statements, the witness is required to attend court and attest to the truthfulness of the statement before it becomes admissible evidence.[19] Thus, if the party serving the statement calls as a witness the person whose statements have been submitted, such statements shall stand as the whole of the witness' evidence-in-chief, as long as the witness testifies as to their truthfulness and unless the court orders otherwise.[20] As to affidavits, they can be read in court even if the witness is absent, as the latter has already testified to the truthfulness of their contents

15. JUDICIAL AFFIDAVIT RULE, whereas cl.

16. Western Australian Bar Association, Preparing Witness Statements in Use for Civil Cases (Guide to Writing Witness Statements Prepared by the Western Australian Bar Association) ii, *available at* http://www.wabar.asn.au/images/Best%20Practice%20Guide%20%2001%20of%202009-2011.pdf (last accessed Nov. 15, 2012).

17. *Uniform Civil Procedure Rules 2005* (NSW) (Austl.).

18. *Id.* s 31.1 (3).

19. *Id.* s 31.4 (5).

20. *Id.*

and has already signed the same.[21] Of course, the adoption of such procedure does not terminate compliance with the rules on admissibility of evidence.[22]

Similarly, the Criminal Procedure Act of 1986[23] provides for the submission of written statements, the evidentiary value of which is clearly stated as "admissible in committal proceedings as evidence to the same extent as if it were oral evidence to the like effect given in those proceedings by the same person."[24] To be valid, however, the statement must comply with certain formal requisites. Thus, Section 79 provides, as follows:

(1) A written statement may be in the form of questions and answers.

(2) A written statement must specify the age of the person who made the statement.

(3) A written statement must be endorsed in accordance with the rules by the maker of the statement as to the truth of the statement and any other matter required by the rules.

(4) A written statement or such an endorsement on a statement must be written in a language of which the person who made the statement has a reasonable understanding.

(5) If the written statement, or part of it, is in a language other than English, a document purporting to contain an English translation of the statement or part must be annexed to the statement.[25]

The increasing reliance on witness statements and affidavits in Australia has been described as part of "modern case management."[26] In fact, in examining the history that has led to more processes becoming written in form, Justice Susan Mary Kiefel of the High Court of Australia has remarked, thus —

> The point to be made at this juncture is that in the late 20th century[,] there was a blow out in litigation which the courts were not able to accommodate, with the result that serious delays were involved in matters coming to trial and being finally determined. It was thought necessary to devise new procedures which allowed the court [a] greater role in the

21. Nicholas Newton, Affidavits and Witness Statements (A Paper for Wenthworth Selbourne Chambers) 6-7, *available at* http://www.13wentworthselborne chambers.com.au/cle/affidavitsandwitnessstatements.pdf (last accessed Nov. 15, 2012).

22. *Uniform Civil Procedure Rules 2005*, s 31.4 (7).

23. *Criminal Procedure Act 1986* (NSW) (Austl.).

24. *Id.* s 78.

25. *Id.* s 79.

26. Michael J. Legg, *The United States Deposition — Time for Adoption in Australian Civil Procedure*, 31 MELB. U. L. REV. 146, 156 (2007).

> management of cases. By this means[,] it was hoped that cases would become more streamlined and litigation more efficient and less costly.[27]

The use of written statements has likewise found ground in the laws of the United Kingdom. Here, the Criminal Procedure Rules[28] expressly state that subject to certain conditions, "a written statement by any person shall ... be admissible as evidence to the like extent as oral evidence to the like effect by that person."[29] The conditions include the requirement that the statement is signed by the person making it, as well as the requirement that it

> contains a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wil[l]fully stated in it anything which he knew to be false or did not believe to be true[.][30]

Part 27 of the Rules, which took effect in 2012, supplies additional guidelines in the use of written statements.[31] It requires, in addition to those of Section 9, the inclusion of the witness' name; age, if under 18; and a declaration that "it is true to the best of the witness' knowledge" and that "the witness knows that if it is introduced in evidence, then it would be an offen[s]e wil[l]fully to have stated in it anything that the witness knew to be false or did not believe to be true[.]"[32]

V. A SYSTEM CHANGE

The Supreme Court, on 4 September 2012, approved the Judicial Affidavit Rule.[33] It will take effect on 1 January 2013.[34] It defines the scope, function, and format of judicial affidavits and makes them applicable nationwide.

The Judicial Affidavit Rule is a product of extensive research and numerous discussions with experts. Judges from the Metropolitan Trial Courts were of particular help in refining the original draft. It was first intended as a part of a more extensive reform involving one-day face-to-face

---

27. Susan Keifel, Justice of the High Court of Australia, Oral Advocacy — The Last Gasp?, Remarks at Supreme & Federal Court Judges' Conference at Canberra (Jan. 27, 2010) (transcript *available at* http://www.hcourt.gov.au/assets/publications/speeches/current-justices/kiefelj/kiefelj-2010-01-27.pdf (last accessed Nov. 15, 2012).

28. Criminal Justice Act, 1967 (U.K.).

29. *Id.* c. 58, § 9.

30. *Id.*

31. Criminal Procedure Rules, 2012, S.I. 2012/1726, rule 27.2 (U.K.).

32. *Id.*

33. *See generally* JUDICIAL AFFIDAVIT RULE.

34. JUDICIAL AFFIDAVIT RULE, § 12.

hearings. The approval of this was taking far too long. The pressing needs of the system however had to be met. Therefore, the Rule was isolated and presented as an independent change.

A. Application, Function, and Contents

After much thought, the Sub-Committee on the Revision of the Rules of Civil Procedure decided that there was insufficient data to impose the Rule on all actions. Although the Quezon City experience did provide some information, the peculiarities of the various regions could affect the implementation of the Rule in ways beyond the Sub-Committee's imagination. If, however, the scope of its application was scaled down too much, then it would not achieve the desired effect.

The Rule shall apply in all first level courts, such as the Metropolitan Trial Courts and the Municipal Trial Courts, excluding small claims cases; in the Regional Trial Courts; in the *Sandiganbayan* and the appellate courts; and in proceedings before the investigating officers and bodies authorized by the Supreme Court to receive evidence.[35] This would even apply in Family Courts except when the witness is a child. The Rule on Examination of a Child Witness[36] will remain in effect. Even cases falling under the purview of the Revised Rules on Summary Procedure, which already require affidavits, could conceivably need to comply with the Rule.[37] This of course

35. *Id.* § 1.

36. *See generally* RULE ON EXAMINATION OF A CHILD WITNESS, A.M. No. 004-07-SC, Nov. 21, 2000.

37. *See generally* 1991 REVISED RULES ON SUMMARY PROCEDURE. The Rule provides that the instances where summary procedure is required for civil cases are the following —

> (1) All cases of forcible entry and unlawful detainer, irrespective of the amount of damages or unpaid rentals sought to be recovered. Where attorney's fees are awarded, the same shall not exceed twenty thousand pesos (₱20,000.00).
>
> (2) All other civil cases, except probate proceedings, where the total amount of the plaintiff's claim does not exceed ten thousand pesos (₱10,000.00), exclusive of interest and costs.

1991 REVISED RULES ON SUMMARY PROCEDURE, § 1. For criminal cases, the instances are —

> (1) Violations of traffic laws, rules and regulations;
>
> (2) Violations of the rental law;
>
> (3) Violations of municipal or city ordinances;
>
> (4) All other criminal cases where the penalty prescribed by law for the offense charged is imprisonment not exceeding six months, or a fine not exceeding one thousand pesos (₱1,000.00) or both, irrespective of other imposable penalties, accessory or otherwise,

is but the opinion of one of the drafters of the Rule. The Court will undoubtedly refine the Rule as cases come before it.

It must be emphasized that the Rule replaces direct examinations of the witnesses with judicial affidavits.[38] Only direct examinations are replaced. Therefore, all other examinations, such as cross or re-direct, remain. Further, to facilitate the speedy dispensation of justice, the documentary or object evidence of the parties is attached to and authenticated through the judicial affidavits.[39]

Gone are the days when counsel would have to drone on marking evidence in court. This practice unnecessarily tied up the courts when its time could be better spent resolving actual controversies. Just as is done today, the complainant or the plaintiff will mark the evidence as Exhibits A, B, C, and so on; while the respondent or the defendant will mark them as Exhibits 1, 2, 3, and so on. The only difference is that court personnel would not have to sit through this tedious undertaking. The Rule also makes allowances for a party or a witness who prefers to keep the original documentary or object evidence rather than leave it in court. He or she may, after identifying, marking, and authenticating the exhibit, warrant in his or her judicial affidavit that the copy or reproduction attached to it is a faithful copy or reproduction of the original.[40] However, during the preliminary conference, he/she must bring the original for comparison with the attached copy, reproduction, or pictures, failing which they shall not be admitted.[41] Of course, "[t]his is without prejudice to the introduction of secondary evidence."[42]

The parties shall file the judicial affidavits with the court and serve copies on the adverse parties.[43] Here, the Court has recognized that the requirement of personal service or service through registered mail only was too rigid. Therefore, licensed courier service is now permitted, "not later

---

> or of the civil liability arising therefrom: Provided, however, that in offenses involving damage to property through criminal negligence, this Rule shall govern where the imposable fine does not exceed ten thousand pesos (₱10,000.00).

Id.

38. JUDICIAL AFFIDAVIT RULE, § 2 (a) (1).

39. *Id.* § 2 (a) (2).

40. *Id.* § 2 (b).

41. *Id.*

42. *Id.*

43. *Id.* § 2 (a).

than five days before pre-trial or preliminary conference or the scheduled hearing with respect to motions and incidents."[44]

Since this Rule applies to pending cases with witnesses awaiting direct examinations,[45] the same can be said notwithstanding the fact that these cases had already undergone pre-trial and just a few testimonies remain to be heard. The remaining testimonies shall be treated as incidents to be heard by judicial affidavits. For example, a criminal case filed before the Metropolitan Trial Court in 2010 has already concluded the examination of the accused and the complainant. Two more witnesses to the crime were scheduled to be heard on two separate days in February 2013. Five days before their testimony in February 2013, their judicial affidavits would have to be submitted. When they appear in court, it would just be for cross-examination.

These judicial affidavits are to be prepared in the language known to the witness and, if not in English or Filipino, accompanied by a translation in such languages.[46] As a result, we are now allowing testimonies to be taken and kept in the dialect of the place, provided they are subsequently translated into English or Filipino. The pleadings should contain the quoted testimonies in their original version, with the English translation provided by the party in parenthesis, subject to counter translation by the opposing side. To illustrate —

> When asked by the judge, Ramon said that the accused arrived in great haste.
>
> 'Q. *Bakit mo sinabing nagmamadali si Julio ng dumating siya?*' (Why did you say that Julio hurriedly arrived?)
>
> 'A. *Kasi po humihingal siya nang dumating.*' (Because he was breathing hard, sir, when he arrived.)

This would avoid the comedic experiences of many litigants when the translator does not have a firm grasp of the dialect or English. Since the original testimony is preserved, if there are still mistakes in translation, the original may still be considered. Since the court would require the original testimony (in Filipino or the dialect) quoted in the pleadings, the court will cease to be English-based — it will truly ascend to being the court of the Philippines.

The Rule has even laid out the basic contents of judicial affidavits. The contents are basically what one would hear in every testimony:

(a) The personal circumstances of the witness;

---

44. JUDICIAL AFFIDAVIT RULE, § 2 (a).

45. *Id.* § 1.

46. *Id.* § 3.

(b) The identity of the lawyer who conducts or supervises the examination of the witness;

(c) The place where the examination is being held; and

(d) A statement that the witness is answering the questions under oath and that he may face criminal liability for false testimony or perjury.[47]

Thus it would appear as follows —

Exhibit 1: Personal Circumstances and Preliminary Statement of Witness

REPUBLIC OF THE PHILIPPINES
NATIONAL CAPITAL JUDICIAL REGION
METROPOLITAN TRIAL COURT
QUEZON CITY, BRANCH 269

ELNORA S. SABUGO,
Plaintiff,

Civil Case No. 51-V-12
- versus - For: Collection

GERRY T. UMALI
Defendant.
x - x

JUDICIAL AFFIDAVIT

I, ELNORA S. SABUGO, of legal age, married, and living at 12 Camalig St., Caloocan City, plaintiff in this case, state under oath as follows:

PRELIMINARY STATEMENT

The person examining me is Atty. Julio C. Magno, with address at 45 Vicente G. Cruz, Sampaloc, Manila. The examination is being held at the same address. I am answering his questions fully conscious that I do so under oath and may face criminal liability for false testimony and perjury.

Then there is the affidavit proper, which contains "[q]uestions asked of the witness and his corresponding answers, consecutively numbered [which] [s]how the circumstances under which the witness acquired the facts upon which he testifies."[48]

To illustrate —

47. *Id.* § 3 (a)-(c).

48. *Id.* § 3 (d).

Exhibit 2: Surrounding Circumstances

QUESTIONS AND ANSWERS
Q1. Do you know Gerry T. Umali, the defendant in this case?
A1. Yes, sir.
Q2. How do you know him?
A2. He asked me if he could borrow money from me, sir.
Q3. Where did this happen?
A3. At my house in Caloocan City.
Q4. When?
A4. On 22 May 2011, sir.

Second, it must also contain questions and answers that elicit facts relevant to the issues.[49]

To illustrate —

Exhibit 3: Facts Relevant to Issues

Q3. What was your response to his request for loan from you?
A3. I agreed to lend him the money he needed.
Q4. How much?
A4. He asked for ₱300,000.00.
Q5. Was your transaction in writing?
A5. Yes, sir. We executed a "*Kasunduan*" on 16 April 2008.

Lastly, it must contain questions and answers that "[i]dentify the attached documentary and object evidence and establish their authenticity in accordance with the Rules of Court."[50]

To illustrate —

49. *Id.*

50. JUDICIAL AFFIDAVIT RULE, § 3 (d).

Exhibit 4: Marking of Evidence

Q6. Where is this "*Kasunduan*" that you mentioned?

A6. This is the one, sir (handing over a document).

Q7. I am marking this "*Kasunduan*" as Exhibit A and the bracketed signature above the name Gerry Umali as Exhibit A-1.

Q8. Do you know whose signature this is?

A8. Yes, sir, that of Gerry Umali.

Q9. How do you know?

A9. I saw him sign it.

Q10. I am marking the signature above the name Elnora Sabugo on this document as Exhibit A-2. Do you know whose signature this is?

A10. Yes, sir, that is my signature.

Q11. I am attaching Exhibit A to your judicial affidavit to form part of it. Do you confirm my action?

A11. Yes, sir.

ELNORA S. SABUGO
Affiant

The questions and answers must of course establish the plaintiff's cause of action or the defendant's defense, as the case may be. The questions must be exhaustive. Amended or supplemental judicial affidavits are not allowed, for if these were allowed, the purpose behind adopting this Rule would be defeated. Therefore, judicial affidavits must be done well the first time around.

Judges are allowed to ask questions even if they were not asked in the judicial affidavits. These questions are supposed to clarify matters that would impact the delivery of justice. This way, cases would not be won or lost solely based on the eloquence of counsel. The judge is now given the explicit authority to uncover the truth.

This does not mean that lawyers should be satisfied with submitting substandard judicial affidavits. They should take this opportunity to present their case in a more efficient manner. Their skill will still come in handy when they conduct cross- or re-direct examinations.

Since the judicial affidavit is a sworn statement taking the place of the testimony he or she would have normally given in court, it must contain the signature of the witness over his or her name and a *jurat* with the signature of

the notary public who administers the oath or an officer who is authorized by law to administer the same.[51]

As for the lawyer who examined the witness or supervised such examination, he or she is required to execute a sworn attestation at the end of the judicial affidavit, saying that

(1) [h]e faithfully recorded or caused to be recorded the questions he asked and the corresponding answers that the witness gave; and

(2) [n]either he nor any other person then present coached the witness regarding his answers.[52]

Thus —

Exhibit 5: Lawyer's Attestation

ATTESTATION

I, JULIO C. MAGNO, with office address at 45 Vicente G. Cruz, Sampaloc, Manila, attest under oath as follows:

I personally conducted the examination of ELNORA S. SABUGO at 12 Camalig St., Caloocan City, plaintiff in Civil Case 51-V-12 of the Metropolitan Trial Court of Quezon City;

I faithfully recorded the questions I asked Ms. Sabugo and the corresponding answers she gave me; and neither I nor any other person then present coached Ms. Sabugo regarding her answers.

JULIO C. MAGNO
Affiant

Any false attestation will subject the lawyer-examiner or the supervising lawyer to disciplinary action, including disbarment.[53] This is not unreasonable, for even without it, the lawyer is already responsible for faithfully recording the questions and answers and preventing the coaching of the witness. Furthermore, the attestation is fair since it is required of the opposing lawyer as well.

It cannot be stressed enough that the judicial affidavit takes the place of direct testimony in court.[54] It is not a regular affidavit that would still be subject to the affiant's testimony in court. If there is to be a true change in the system, the fidelity of the judicial affidavits must be preserved.

51. *Id.* § 3 (f).

52. *Id.* § 4 (a).

53. *Id.* § 4 (b).

54. *Id.* § 2.

After all, what is wrong with requiring lawyers to assume responsibility for their actions? The attestation merely places the lawyer on guard. It is a simple reminder that every time he or she signs the attestation, he or she will be held accountable.

In case the government employee or official, or the requested witness,

> unjustifiably declines to execute a judicial affidavit or refuses without just cause to make the relevant books, documents, or other things under his control available for copying, authentication, and eventual production in court, the requesting party may avail himself of the issuance of a subpoena *ad testificandum* or *duces tecum* under Rule 21 of the Rules of Court.[55]

In this case, "[t]he rules governing the issuance of a subpoena to the witness shall be similar to the taking of his deposition except that the taking of a judicial affidavit shall be understood to be *ex parte*."[56]

With the judicial affidavit taking the place of direct testimony, what remedy does the opposing party have if inadmissible evidence is introduced through such affidavit? The Rule requires the party presenting the judicial affidavit of his witness to state at the start of the presentation of the witness his purpose for presenting such testimony.[57] The adverse party may then "move to disqualify the witness or to strike out his affidavit or any of the answers found in it on [the] ground of inadmissibility."[58] In case a motion is made, the court shall promptly rule on it "and, if granted, shall cause the marking of any excluded answer by placing it in brackets under the initials of an authorized court personnel."[59] Moreover, if cross examination reveals an inadmissible testimony in the judicial affidavit, the adverse party could of course ask that it be stricken out.[60] This is "without prejudice to a tender of excluded evidence under Section 40 of Rule 132 of the Rules of Court."[61]

Cross-examination is allowed as the Rule expressly provides that "[t]he adverse party shall have the right to cross-examine the witness on his judicial affidavit and on the exhibits attached to the same."[62] Since he has been given a copy of the judicial affidavit long before the hearing, the adverse party would have no reason to seek postponement. The party who presents the witness may also examine him as on re-direct.

---

55. *Id.* § 5.

56. JUDICIAL AFFIDAVIT RULE, § 5.

57. *Id.* § 6.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. JUDICIAL AFFIDAVIT RULE, § 7.

B. Oral Offer of Evidence

As illustrated in Exhibit 4, the Rule also modifies the manner of marking evidence. Oral offers of, and objections to, evidence are discussed in Section 8 —

> (a) Upon the termination of the testimony of his last witness, a party shall immediately make an oral offer of evidence of his documentary or object exhibits, piece by piece, in their chronological order, stating the purpose or purposes for which he offers the particular exhibit.
>
> (b) After each piece of exhibit is offered, the adverse party shall state the legal ground for his objection to it, if any, and the court shall immediately make its ruling respecting that exhibit.
>
> (c) Since the documentary or object exhibits form part of the judicial affidavits that describe and authenticate them, it is sufficient that such exhibits are simply cited by their markings during the offers, the objections, and the rulings, dispensing with the description of each exhibit.[63]

Essentially the oral offer of evidence follows the method as laid out in the Rules on Evidence but explicitly integrates the use of the markings made in the judicial affidavit.[64] This may seem like a small matter but in practice, this would expedite the proceedings.

---

63. *Id.* § 8.

64. *Compare* JUDICIAL AFFIDAVIT RULE, § 8 *with* REVISED RULES OF EVIDENCE, rule 132, §§ 34-36. The Rules on Evidence provide —

> Section 34. *Offer of evidence.* — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.
>
> Section 35. *When to make offer.* — As regards the testimony of a witness, the offer must be made at the time the witness is called to testify.
>
> Documentary and object evidence shall be offered after the presentation of a party's testimonial evidence. Such offer shall be done orally unless allowed by the court to be done in writing.
>
> Section 36. *Objection.* — Objection to evidence offered orally must be made immediately after the offer is made.
>
> Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent.
>
> An offer of evidence in writing shall be objected to within three (3) days after notice of the offer unless a different period is allowed by the court.
>
> In any case, the grounds for the objections must be specified.

REVISED RULES OF EVIDENCE, rule 132, §§ 34-36.

C. Application to Criminal Actions

The Judicial Affidavit Rule shall apply to criminal actions

(1) [w]here the maximum of the imposable penalty does not exceed six years;

(2) [w]here the accused agrees to the use of judicial affidavits, irrespective of the penalty involved; or

(3) [w]ith respect to the civil aspect of the actions, whatever the penalties involved are.[65]

In these cases,

> the prosecution shall submit the judicial affidavits of its witnesses not later than five days before the pre-trial, serving copies of the same upon the accused. The complainant or public prosecutor shall attach to the affidavits such documentary or object evidence as he may have, marking them as Exhibits A, B, C, and so on. No further judicial affidavit or documentary or object evidence may be admitted at the trial.[66]

Moreover, "[i]f the accused desires to be heard on his defense after receipt of the judicial affidavits of the prosecution, he shall have the option to submit his judicial affidavit as well as those of his witnesses to the court within [10] days from the receipt of such affidavits and serve a copy of each on the public and private prosecutor[s],"[67] or keep his silence. Because the prosecution lays all its evidence on the table, the accused can freely and reasonably make his choice of whether to remain silent or not.

The only time direct testimonies would still be absolutely necessary is during the positive identification of the accused. Otherwise, the accused may avail of judicial affidavits in lieu of direct examinations. In cases where the application of the Rule is mandatory, if the accused does not submit his judicial affidavit then it would be as if he or she exercised his or her right to remain silent. He or she would not be allowed to later testify. It is therefore essential that the consequences of not filing a judicial affidavit be explained to the accused from the onset.

D. Effects of Non-Compliance with the Rule

As mentioned above, if a party fails to submit his judicial affidavits, he or she shall be deemed to have waived his or her submission.[68] However, the court may give him or her one last chance to submit them "provided, the delay is for a valid reason, would not unduly prejudice the opposing party, and the

65. JUDICIAL AFFIDAVIT RULE, § 9 (a).

66. *Id.* § 9 (b).

67. *Id.* § 9 (c).

68. *Id.* § 10 (a).

defaulting party pays a fine of not less than ₱1,000.00 nor more than ₱5,000.00, at the discretion of the court."[69]

Similarly,

> the court shall not consider the affidavit of any absent witness who fails to appear at the scheduled hearing of the case as required. Counsel who fails to appear without valid cause despite notice shall be deemed to have waived his client's right to confront by cross examination the witnesses there present.[70]

Finally, the court shall not admit as evidence judicial affidavits which do not comply with the content requirements of Section 3 and the attestation requirement of Section 4.[71] However, it may be allowed only once upon the subsequent submission of the compliant replacement affidavits before the hearing or trial "provided the delay is for a valid reason, would not unduly prejudice the opposing party, and provided the public or private counsel responsible for their preparation and submission pays a fine of not less than ₱1,000.00 nor more than ₱5,000.00, at the discretion of the court."[72]

The court must, of course, never punish those who are not at fault. To avoid the fines, lawyers must carefully consider whether they are ready to comply with the requirements of the Rule before filing a case. Rather than going to court unprepared without second thought as to how to prove the case, lawyers will have to first compile their evidence and strategize. Instead of clogging the dockets with suits intended to hassle parties, lawyers would have to come bearing meritorious cases armed with some form of proof. This way they would be contributing to the dispensation of justice and not just taking advantage of the infamously slow system to get their way.

E. Combined Adversarial and Inquisitorial Systems

The Judicial Affidavit Rule signals the shift in our system for hearing cases from purely adversarial to a combined adversarial and inquisitorial system, patterned after many successful models in the world. In every case, the judge shall take active part in examining the witness. He is not limited to asking clarificatory questions; he may also ask questions that will determine the credibility of the witness, ascertain the truth of his testimony, and elicit the answers that the judge needs for resolving the issues.

In case the examination of the witness by the judge results in eliciting answers that are favorable to a party to the case, such will not necessarily be regarded as showing bias in favor of that party. The reason the judge under

69. *Id.*

70. *Id.* § 10 (b).

71. JUDICIAL AFFIDAVIT RULE, § 10 (c).

72. *Id.* § 10 (c).

the jury system avoids asking questions of the witness is that the members of the jury, who are common people, might give undue importance to the answers the judge elicits more than what those answers actually deserve. We, however, have no jury. Besides, a party is not prevented from objecting to questions from the judge if they tend to elicit inadmissible answers. In any case, the answer comes not from the judge but from the witness. If the answer is admissible, such answer simply lends itself to the court's search for the truth. Trial is not about preventing unfavorable questions from being asked but about bringing out the truth no matter who is favored by it. What is more, if the judge shows clear and outright bias, precluding the idea that he is only after the truth, the prejudiced party can seek his inhibition. But be aware that the Supreme Court has been suspending lawyers from practice who file frivolous motions for inhibition against judges.

This shift will hopefully prove to be the key to the improvement of the Philippine justice system. True, much is demanded of prosecutors and public attorneys given their limited resources. Many of the hurdles will appear during the early implementation of the Rule. This period would be a learning curve for everyone. However, fear of the unknown cannot hold the improvement of the system hostage.

There are so many more benefits to rising up to meet this challenge. Cases like the Maguindanao Massacre,[73] which would involve hundreds of direct examinations, would benefit from the use of judicial affidavits. The shift would then give the people a glimmer of hope that they would see justice in their lifetime.

VI. CONCLUSION

A slow judicial process will always be an affront to justice. The Judicial Affidavit Rule seeks to cure this defect. It has existed for much too long in the country's judicial system. It has been embedded in every citizen's consciousness. Many have given up but the Supreme Court has heard the call for judicial reform.

---

73. Mark D. Merueñas, *Slow-paced trial a heavy burden for kin of Maguindanao Massacre victims*, *available at* http://www.gmanetwork.com/news/story/283472/news/specialreports/slow-paced-trial-a-heavy-burden-for-kin-of-maguindanao-massacre-victims (last accessed Nov. 15, 2012). The prosecution of the Ampatuans has been characterized by a slow pace, fraught with delay. Over 120 witnesses have been presented by the prosecution, and the defense has objected to each and every one of them. Should these witnesses eventually be allowed to testify, one can only imagine the length of time it would take for the traditional procedure to hear all of them.

Id.

This Rule is but a part of their response. Of course, just like any other change of existing structure, criticism and resistance are expected. Yet no reform has to be perfect at once; it is sufficient if progress materializes no matter how small the step. We cannot allow fear of the future these changes may bring to paralyze the system. We need only be reminded of the substantial improvements the Rule has made in the courts of Quezon City to reignite our hopes for a better system.

The Rule requires the re-education of the legal community. It demands a change in perspective. Lawyers will be required to prepare from the onset and part ways with their dilatory tactics. Judges will need to break from their established practices and yield to the demands of a new system.

In this age where the demand for accountability is increasingly made heard and felt, the Judiciary must not be left behind. For the country to truly advance in this area, the courts must actively take part in ensuring not only that justice is done, but also that it is done properly and efficiently. The effects of the Judicial Affidavit Rule, when made applicable nationwide, is certainly yet to be felt. Some may say that these changes are coming too fast and the Court expects too much. There are, however, so many more unheard voices, hoarse from the decades of outcry, for whom this could not have come fast enough.