Playing by the Rules: An Ethical Analysis of the 2019 Revised Rules of Civil Procedure

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I. PREFATORY

Karl Llewelyn, the famous legal realist, said —

> Within the law, I say, therefore, rules *guide*, but they do not *control* decision. There is no precedent the judge may not at his need either file down to razor thinness or expand into a bludgeon. *Why should you expect the ethics of the game to be different from the game itself?*[1]

While early legal realism focused on judicial decision making, as shown in the quote above, the concept has also been used to study legal ethics and practice.[2] Applying legal realism, rules become essentially just suggestions, contrary to traditional models where legal rules are premised on formalist assumptions about their constraining power.[3]

It is with this perspective that this Article will discuss the 2019 Amendments to the 1997 Rules of Civil Procedure (2019 Rules),[4] which took effect in May 2020. The amendments are quite substantial, clearly meant to address perennial problems in the litigation of civil cases. Going through each of the changes is no doubt a useful exercise, but this Article is neither intended to dissect the amendments nor serve as a definitive guide for judges, litigators, and law students. Rather, this Article may as well be the ramblings of three restless — at times frustrated — court frequenters trying to get by in the noble practice of representing clients in litigation. The intention is to pique the reader's interest to take a step back to see the ethical considerations that are at the core of the amendments (i.e., how ethical issues have shaped the 2019 Rules). Thus, this Article attempts to show that lawyers and litigants are merely guided by the rules to a large extent, and the heart and soul of a properly conducted litigation will always be ethics. Perhaps this approach can teach a lesson or two about how cases should be litigated to help ensure that the justice system can truly work.[5]

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1. KARL LLEWELYN, THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY 150 (2012) (emphasis supplied).
2. *See* Douglas N. Frenkel, et al., *Bringing Legal Realism to the Study of Ethics and Professionalism*, 67 FORDHAM L. REV. 697, 701 (1998) & David B. Wilkins, *Legal Realism for Lawyers*, 104 HARV. L. REV. 469, 470 (1990).
3. *See generally*, Wilkins, *supra* note 2, at 470.
4. 2019 REVISED RULES OF CIVIL PROCEDURE.
5. Unfortunately, this Article is also not intended to dissect ethical rules through a traditional versus realist approach. *See* Wilkins, *supra* note 2, at 523 (for proposals on how to tailor fit ethical rules given these two competing approaches).

II. ETHICAL ANALYSIS OF THE 2019 RULES

The justice system has seen a lot of improvement, but there is still a lot of room for it — this is true not only in criminal but also civil cases. There are many issues, but three stand out and have been brought to light by the recent amendments to the rules: (a) *inordinate delay*; (b) *the filing of frivolous claims and setting up of superficial defenses*; and (c) *the tendency of unscrupulous parties to avoid court and other legal processes*. Quite noticeably, these issues have ethical underpinnings, both for the lawyer and the party-litigant.

Obviously, the rules play a critical role to address these issues. Indeed, compliance with procedural rules is a must "since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice."[6] Nevertheless, understanding the ethical context of the rules is also important. Some notable changes are discussed below in this light.

A. Inordinate Delay

When talking about the problems of the Philippine justice system, it is hard to shake off the tired and trite mantra "justice delayed is justice denied."[7] It is gospel truth and universally recognized, but somehow the Philippines has yet to implement reforms that will truly address the problem of delay.

The Constitution mandates that all cases must be resolved within 24 months for the Supreme Court, 12 months for all lower collegiate courts, and three months for all other lower courts.[8] The speedy disposition of cases, after all, is the Constitutional right of every person.[9] It is miserably common, however, for trials to last as long as one to three years, sometimes even longer. Many cases take 10 to 15 years to be resolved if elevated all the way to the Supreme Court. Most times, parties end up spending prodigious amounts for legal fees and other costs of prolonged litigation.

Needless to state, delays in civil cases have far-reaching effects. When there is delay, it is the plaintiff who suffers dearly. In a justice system where

6. Curammeng v. People, 808 SCRA 613, 620 (2016) (citing CMTC International Marketing Corporation v. Bhagis International Trading Corporation, 687 SCRA 469, 474 (2012)).

7. This legal maxim was first stated by Former British Statesman and Prime Minister William E. Gladstone. Tania Sourdin & Naomi Burstyner, *Justice Delayed is Justice Denied*, VIC. U.L. JUSTICE J., Volume No. 4, Issue No. 1, at 46.

8. PHIL. CONST. art. VIII, § 15 (1).

9. PHIL. CONST. art. III, § 16.

delay is systemic, the tendency is for the defendant to resist even the most clearly valid claims. After all, why pay a claim when there is a deterrence, i.e., delay, for the plaintiff to pursue the claim? The defendant can just force the plaintiff to litigate and expend time and resources; anyway, an adverse final decision will not see the light of day until 10, maybe, 15 years later. The result of this cavalier attitude of the defendant: clogged court dockets. And when court dockets are clogged, *there is even more delay*. The problem gets compounded, and claimants continue to get penalized with even more delay. It becomes a vicious cycle.

Some may argue that judicial delay could encourage amicable settlement. This may be true, but that does not assure the quality of compromises entered into by the parties. Most times, delay and the idea of a protracted litigation forces the claimant to agree to a compromise for an amount significantly lower than the actual claim. The time and expenses spent in litigation also become an overpowering quotient in the settlement equation. In the end, many compromises are entered into not because the terms are inherently fair but because the alternative of fighting it out in a grueling and long-drawn-out litigation is a very tough pill to swallow.

Ultimately, too, in the Supreme Court's own words, "the unwarranted slow-down in the disposition of cases erodes the faith and confidence of the people in the judiciary, lowers its standards and brings it into disrepute."[10]

Certainly, courts are congested with thousands of cases to try and resolve.[11] The problem, however, seems to be rooted in a combination of delays caused by litigants themselves and perhaps inaction or lack of procedural control on the part of some judges.[12] Lawyers themselves, as officers of the court, have the responsibility to assist in the proper administration of justice.[13] They are oath-bound not to unduly delay a case, impede the execution of a judgment, or misuse court processes.[14] Despite these duties, pending cases have at times become merely a money-making venture for some lawyers who

10. Biggel v. Pamintuan, 559 SCRA 344, 350 (2008) (citing Atty. Beltran, Jr. v. Atty. Paderanga, 407 SCRA 475, 479 (2003)).

11. *See* Alfredo F. Tadiar, Unclogging the Court Dockets (A Paper Presented at the 1999 Symposium on Economic Policy Agenda for the Estrada Administration) at ⋆1, *available at* https://dirp3.pids.gov.ph/ris/taps/tapspp9926.pdf (last accessed Sep. 30, 2020).

12. *Id.* at 1-3.

13. Pepsi Cola Products Phils., Inc. v. Court of Appeals, 299 SCRA 518, 527 (1998).

14. CODE OF PROFESSIONAL RESPONSIBILITY, rule 12.04.

seem to squeeze out their client's resources with every court appearance, pleading filed, and legal service rendered. At the end of the day, the client is at a loss not only because she is constrained to defer to the expertise of her lawyer but more importantly because she is bound by the acts and negligence of her counsel.[15] Members of the judiciary are not free from fault either. In several instances, judges have been reprimanded for their undue inaction on judicial concerns.[16] Indeed, what seems like nonchalant pacing in holding proceedings and rendering decisions has caused perennial problems of court congestion.[17]

Discussed below are some of the significant changes in the 2019 Rules that address issues of inordinate delay, with a discussion of their ethical underpinnings.

1. Pleadings

a. Limited Opportunity to File Reply

Under the 2019 Rules, a reply may be filed only if the defendant attaches an actionable document to her answer.[18] Otherwise, the plaintiff will have to file an amended or supplemental complaint, if warranted, but only to interpose any claims arising out of new matters alleged in the answer.[19]

Allowing the filing of a reply only in limited instances cuts down delay. This new rule also forces the plaintiff to anticipate and address in the complaint the possible allegations that the defendant will raise in the answer. The result is that issues are sharper after the answer is filed.

b. Additional Contents of and Attachments to the Pleading

The amendments inserted in the new Section 6, Rule 7 spell out the contents of a pleading.[20] Every pleading must now state the names of the party's

15. Beatriz v. Cederia, 4 SCRA 617, 621 (1962).

16. *See, e.g.*, Marcelo v. Peroxide Phils., Inc. 824 SCRA 91, 105 (2017) (citing *Biggel*, 559 SCRA at 349); Tamondong v. Pasal 842 SCRA 562, 568 (2017); Hilario v. Concepcion 327 SCRA 96, 104 (2000); & Marcelo v. Pichay, 718 SCRA 464, 473 (2014)).

17. *Biggel*, 559 SCRA at 350.

18. 2019 REVISED RULES OF CIVIL PROCEDURE, rule 6, § 2, para. 3.

19. *Id.* rule 6, § 10, para. 1.

20. *Id.* rule 7, § 6.

witnesses, along with a summary of those witnesses' intended testimonies.[21] The same rule also now requires the parties to attach to their respective pleadings the judicial affidavits of their witnesses and state the documentary and object evidence relied upon to support such pleadings.[22]

Prior to the amendment, the Rules merely provided for the technical outline of a pleading.[23] Thus, it was usual for parties to file a pleading without stating any supporting evidence. After all, the old rule merely required a statement of the ultimate facts and not evidentiary facts.[24] When misused, this rule allowed the parties to file haphazard pleadings barely sufficient to cover the basic elements of the relevant cause of action or defense. In fact, it was not surprising to see pleadings that contained mostly legal conclusions. Even worse, the old rule made it easier for parties to file baseless complaints intended to harass the other party, further congesting court dockets in the process.

Naturally, pleadings containing just the ultimate facts were easier and quicker to prepare. This, however, caused delay in the long run because the factual issues remained unsharpened until trial, when both parties scramble to produce evidence to prove their claims and defenses. By then, the parties and even the judge may still be feeling in the dark, not knowing what new evidence might jump at them on any given hearing day.

The insertion of Section 6, Rule 7 — coupled with Section 1, Rule 8 requiring the statement of evidentiary facts in the pleading[25] — helps ensure that a party, as early as the filing of the complaint or answer, already has sufficient evidentiary basis to support the pleading. This has profound consequences. *First*, it presents an opportunity for the lawyer to evaluate the evidence and determine if the case is worth trying in court or whether a compromise might be the better choice. *Second,* the lawyer is also forced to dive deep into the evidence at the earliest opportune time, allowing her to prepare for possible trial way ahead of schedule. This can mean less postponements and a more efficient trial. *Third*, the rule helps ensure that the

21. *Id.*

22. *Id.*

23. 1997 RULES OF CIVIL PROCEDURE, rule 7 (superseded 2019).

24. *Id.* rule 8, § 1.

25. 2019 REVISED RULES OF CIVIL PROCEDURE, rule 8, § 1. This Section states in part that "[e]very 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." *Id.* (emphasis supplied).

parties lay down all their cards on the table, preventing them from engaging in a fishing expedition.

Needless to state, the conscientious disclosure of evidence is central to an efficient and well-managed trial. Come to think of it, however, all the foregoing "consequences" of the amendment should have been a given with or without the amendment. If lawyers and litigants were more conscientious, deliberate, and diligent in the preparation of their cases, and if they actively participate in an efficient pre-trial of the case, this amendment will have been superfluous.

2. Motions

Another bottleneck in civil cases is the resolution of motions that delay the proceedings more than anything else. To address this, the 2019 Rules now contain Section 12, Rule 15 on prohibited motions.[26] The following motions are now proscribed:

(1) Motion to dismiss except on limited grounds;[27]

(2) Motion to hear affirmative defenses;[28]

(3) Motion for reconsideration of the court's action on the affirmative defenses;[29]

(4) Motion to suspend proceedings without an injunction or restraining order issued by a higher court;[30]

(5) Motion for extension of time to file pleadings, affidavits, or any other papers, except a motion for extension to file an answer;[31] and

(6) Motion for postponement intended for delay, except if it is based on acts of God, force majeure, or physical inability of the witness to appear and testify.[32]

26. *Id.* rule 15, § 12.

27. *Id.* rule 15, § 12 (a).

28. *Id.* rule 15, § 12 (b).

29. *Id.* rule 15, § 12 (c).

30. 2019 REVISED RULES OF CIVIL PROCEDURE, rule 15, § 12 (d).

31. *Id.* rule 15, § 12 (e).

32. *Id.* rule 15, § 12 (f).

Section 12 (a), Rule 15 now prohibits the filing of a motion to dismiss unless the same are based on non-waivable grounds.[33] This change is highlighted by the removal of the entire Rule 16 of the old Rules.[34] This should be read in relation to the amended Section 12, Rule 8, which enjoins the defendant to raise her affirmative defenses — including the usual grounds for the dismissal of a case — in the answer, essentially doing away with a motion to dismiss.[35] Moreover, by prohibiting a motion for reconsideration and a petition for certiorari on the resolution of affirmative defenses, the Rules now also curb the dilatory practice of litigants of questioning an adverse ruling on the affirmative defenses to stem the case from proceeding to trial. Now, the recourse of the defendant is to raise the issue of affirmative defenses on appeal.

The prohibition on motions for extension is also significant. Sadly, the filing of a "motex," as it is often called in litigation parlance, has become second nature to lawyers. The deadline for a pleading has become a mere suggestion and lawyers will file for extension without blinking an eye. The new rule abolishes extensions except for the filing of an answer. But the prohibition would not have been necessary if lawyers took their court deadlines seriously without having to be "constrained to ask for an extension because of other urgent, equally important work," as is often the cited excuse.

3. Hearings, Pre-Trial, and Trial

a. Motion Hearings

Another salient amendment is the removal of the "three-day notice rule" and the requirement that motions be heard provided for in the old Section 4, Rule 15.[36] Before the amendment, it was basic that all written motions must be heard with the exception of "non-litigious" motions or those which may be acted upon by the court without prejudice to the rights of the adverse party.[37] Under the old rule, a party-movant was required to set her motion for hearing within 10 days from filing of the motion, and the other party must be given

33. The grounds that can still be the subject of a motion to dismiss are: (a) lack of subject matter jurisdiction, (b) *litis pendentia*, (c) *res judicata*, and (d) prescription. *Id*. rule 15, § 12 (a).

34. 1997 RULES OF CIVIL PROCEDURE, rule 16.

35. 2019 REVISED RULES OF CIVIL PROCEDURE, rule 8, § 12.

36. 1997 RULES OF CIVIL PROCEDURE, rule 15, § 4.

37. *See* Bagano v. Hontanosas, 458 SCRA 59, 64 (2005).

notice of the same at least three days before the hearing.[38] Failure to comply with the notice rule made the motion defective and could result in its denial.[39]

While, concededly, a hearing is an essential aspect of due process, the old rule requiring motions to be set for hearing allowed the evolution of an absurd practice that has proved to be a useless exercise. A big chunk of the hearings that a lawyer attends are "motion hearings" when a motion is set for hearing, but the other party merely requests for time to file a written comment on the motion ("Fifteen days to comment, Your Honor, please!"). The judge — perhaps after shortening the time to comment by five days — moves on to the next case, and the lawyers happily walk out of the courtroom and collect their appearance fees. Hours are spent traveling to the court and waiting for the case to be called, just so the non-movant party can ask for time to file a comment. If the movant is unlucky, the opposing party might even ask for an extension of time to comment. Before anyone notices, one, two, three months pass, and the motion (e.g., a run-of-the-mill motion for execution) is still unresolved.

Laudably, under the 2019 Rules, the movant need not anymore set her motion for hearing. Instead, Section 5 (c), Rule 15 automatically gives the adverse party only five days to file an opposition to the litigious motion, and the court 15 days from receipt of the adverse party's opposition, or upon the expiration of the period to file such opposition, to resolve the motion.[40] This notwithstanding, written motions can still be heard at the discretion of the court,[41] especially if the motion is based on facts that do not appear on the record.[42]

b. Pre-Trial

i. Pre-trial, Court-Annexed Mediation, and Judicial Dispute Resolution

Five days after the last responsive pleading is filed, the notice of pre-trial should automatically issue,[43] and must include the dates for: (a) pre-trial itself; (b) court-annexed mediation; and (c) judicial dispute resolution.[44] The 30-day

38. 1997 RULES OF CIVIL PROCEDURE, rule 15, §§ 4-5.

39. *See* Obrero v. Acidera, 550 SCRA 523, 56 (2008).

40. 2019 REVISED RULES OF CIVIL PROCEDURE, rule 15, § 5 (c).

41. *Id.* rule 15, § 6.

42. *Id.* rule 15, § 2.

43. *Id.* rule 18, § 1.

44. *Id.* rule 18, § 3.

court annexed mediation is mandatory[45] and, when the court is convinced that settlement is still possible, the case may be referred to another court for judicial dispute resolution for a non-extendible 15-day period after the termination of the mediation proceedings.[46] These changes show that settlement between the parties is still highly encouraged. While the additions are not so novel, they spell out a more efficient manner of going about the pre-trial stages of the case.

If the plaintiff does not participate or attend any of the settings, the case may be dismissed.[47] In the same way, the failure on the part of the defendant and counsel to appear shall be cause to allow the plaintiff to present his or her evidence *ex-parte* within 10 calendar days from termination of the pre-trial, and the court to render judgment on the basis of the evidence offered.[48] Significantly, the 2019 Rules now require both the party and counsel to be present during pre-trial.[49] Thus, the amendments seek to ensure that both parties and their respective counsels are actively engaged in the pre-trial of the case.

ii. Marking and Identification of Evidence

Under the 2019 Rules, come pre-trial, parties are required to "[m]ark their respective evidence[,]"[50] "examine and make comparisons of the adverse parties' evidence [with those that will be marked,]"[51] and "manifest for the record stipulations regarding the faithfulness of the reproductions and the genuineness and due execution of the adverse parties' evidence[.]"[52] When a party or counsel fails to appear during pre-trial without just cause, any objections to the faithfulness of the reproductions marked, or their genuineness and due execution shall be waived.[53] This requirement saves a lot of time when presenting a witness, especially if exhibits are voluminous. Litigants will be able to focus on the merits of the documents and the witnesses' testimony, rather than on authenticating and marking each

45. *Id.* rule 18, § 8.

46. 2019 REVISED RULES OF CIVIL PROCEDURE, rule 18, § 9.

47. *Id.* rule 18, §§ 4-5.

48. *Id.* rule 18, § 5.

49. *Id.* rule 18, §§ 4-5.

50. *Id.* rule 18, § 2 (g) (1).

51. *Id.* rule 18, § 2 (g) (2).

52. 2019 REVISED RULES OF CIVIL PROCEDURE, rule 18, § 2 (g) (3).

53. *Id.* rule 18, § 2 (h).

document during trial. This change addresses the propensity of lawyers and litigants to use the rules on authentication of evidence to question the most trivial of details in a documentary exhibit instead of focusing on its probative value.

The 2019 Rules also attempt to address the ingenious and shrewd concept of "reservation" of evidence. The practice of reserving evidence has become so ubiquitous that it is not unheard of to attend a pre-trial where all of a party's evidence is reserved — from testimonial to documentary evidence. One might even litigate a theft case where the prosecution reserves the marking and identification of the very *corpus delicti* — the stolen item itself. Thinking about it, the reservation of evidence may not even be necessary in the first place if lawyers and litigants conscientiously prepare their cases or effectively make use of discovery. Now, the rules require reservations to be made in a particular manner: "[f]or testimonial evidence, by giving the name or position and the nature of testimony of the [ ] witness[,]" and for documentary or other object evidence, "by giving a particular description of the evidence."[54] Thus, when evidence is not available, parties are required to make reservations in such a manner that the court, and the opposing party are made aware of the particular description, content, purpose, and nature of the evidence to be presented.[55] Unfortunately, aside from "just cause,"[56] the 2019 Rules do not provide for specific grounds to allow the reservation of evidence, so it looks like the notorious practice of reservation of evidence will be here to stay. Hopefully, read together with the new requirement that evidence must already be included in the parties' pleadings, courts will be more stringent in allowing the reservation of evidence.

c. Judgment After Pre-Trial

Fundamentally, pre-trial under the 2019 Rules forces the parties to lay down all their cards on the table. This complements the rule requiring the parties to include their evidence in their pleadings.[57] These changes minimize unnecessary delay and surprises. Moreover, since all the pieces of evidence are already available, the court can break down the genuine legal and factual issues at an early stage — so much so that if there are no more issues, controverted facts, or genuine issue as to any material fact, or should the answer fail to tender an issue, the court can submit the case for summary judgment or judgment on

54. *Id*. rule 18, § 2 (g) (4).

55. *Id*.

56. *Id*. rule 18, § 2 (h).

57. *Id*. rule 7, § 6 (c).

the pleadings, without need for position papers or memoranda.[58] In short, the court can proceed to decide the case. This order of the court submitting the case for judgment is final,[59] and, in such case, judgment shall be rendered within 90 calendar days from termination of the pre-trial.[60] The order submitting the case for judgment cannot be the subject of an appeal or petition for *certiorari*.[61] The aggrieved party's remedy is to question the decision based on the merits.

This change addresses the fact that parties will rarely mutually admit that facts or issues are uncontroverted. Often times, parties will deny facts for the sake of denying them and putting the other party to its burden of proof. Defendants, most especially, will not normally be expected to actively stipulate on facts. This problem is compounded by judges who choose to sit idly by and let all cases run through the course of a trial, sometimes unnecessarily. The revision in the Rules gives the court better control over the disposition of the case. Used effectively by the judge, parties can expect a decision within six months. This is a massive improvement from what parties currently experience, and it will definitely save everyone time and resources. Of course, the amendment still requires the cooperation of the parties by conscientiously entering into stipulations and working together to break down the real issues in the case.

d. Trial and Postponements

If settlement was unsuccessful and pre-trial judgment was unavailing, trial will proceed continuously and for a maximum of 10 months or 300 calendar days.[62] Ninety days is basically the maximum time each party is allowed to present her case.[63] Considering that come trial, the parties have already submitted and marked their evidence, this time should be more than sufficient. Trial dates may, nevertheless, be shortened depending on the number of witnesses to be presented.[64]

58. 2019 REVISED RULES OF CIVIL PROCEDURE, rule 18, § 10.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.* rule 30, § 1 (b).

63. *Id.* rule 30, § 1 (a).

64. 2019 REVISED RULES OF CIVIL PROCEDURE, rule 30, § 1 (b).

Perhaps the most important change under the 2019 Rules is that all hearing dates will have been pre-determined at pre-trial,[65] and the parties must strictly observe the schedule.[66] Trial dates are final and non-transferable. Moreover, no motions for postponements that are dilatory in character shall be entertained by the court.[67] A postponement may only be allowed if it is based on acts of God, force majeure, or physical inability of the witness to appear and testify.[68] In fact, even if a postponement becomes inevitable based on those grounds, the party who caused the delay must still terminate her presentation of evidence on the remaining dates previously set.[69] An added deterrent is the requirement of payment of the postponement fee, proof of which must accompany the motion.[70]

While the "court may adjourn [the] trial from day to day ... as the expeditious and convenient transaction of business may require,"[71] it cannot adjourn the trial for a period longer than one month for each adjournment, and, in any case, postponements should not exceed three months in total.[72] To be exempted from this, the court must be authorized in writing by the Court Administrator or the Supreme Court.[73]

After a party presents her case, the oral offer of evidence must immediately follow, and the court shall, also orally, make its ruling on the offer.[74] After that, the court must decide the case within 90 calendar days from the submission of the case for resolution, with or without the filing of memoranda.[75]

This stricter trial calendar prevents litigants from delaying the case. With the new Rules, the judge would have every reason to deny dilatory postponements because failure to decide cases and other matters within the

65. *Id.* rule 18, § 2 (d).

66. *Id.* rule 30, § 1.

67. *Id.* rule 15, § 12 (f).

68. *Id.*

69. *Id.* rule 30, § 2. *See also* 2019 REVISED RULES OF CIVIL PROCEDURE, rule 15, § 12 (f).

70. 2019 REVISED RULES OF CIVIL PROCEDURE, rule 15, § 12.

71. *Id.* rule 30, § 2.

72. *Id.*

73. *Id.*

74. *Id.* rule 30, § 6.

75. *Id.* rule 30, § 1 (c).

prescribed period may constitute gross inefficiency and warrant the imposition of administrative sanction.[76] The amendments stifle the practice of lawyers who repeatedly and unnecessarily ask for postponements of hearings, which are usually because they fail to adequately prepare for the same. All things considered, with the new changes, a case should not exceed a year to conclude. This will be a significant improvement.

Ideally, trial should be continuous from one day to the very next, as seen in practices abroad, where it is common to conclude the presentation of evidence within a matter of days or weeks. Thus, it is common in other jurisdictions for trial to be set several months after the pre-trial, but with the trial dates dated consecutively from day to day. This is optimal because it gives the parties enough time to prepare their case and allows them and the judge to focus on the trial of just one case at a time. The lawyers can concentrate on the trial, and the judge can appreciate all the fresh evidence in one go. With the current system the Philippines has, it is difficult, if not impossible to have any kind of momentum in the trial of cases. Thus, facts and procedural antecedents can easily be forgotten, given that trial dates are far between. For now, however, it looks like the Supreme Court does not believe the justice system is ready for genuinely day-to-day trial.

B. Frivolous Claims and Superficial Defenses

1. Counsel's Signature

Another notable amendment to the 2019 Rules is Section 3, Rule 7, which addresses the tendency of some lawyers to wantonly disregard their ethical duties as officers of the court.[77] The Supreme Court seems to have introduced the amendment to remind lawyers that their signature on pleadings or court-bound documents comes with responsibility and accountability.[78]

With the amendment, instead of just certifying that the lawyer has *read the pleading*, that there is *good ground to support it*, and that it is *not interposed for delay*, the lawyer now certifies the following "to the best of his or her knowledge, information, and belief, formed after an inquiry reasonable under the circumstances"[79] by signing the document:

76. *Hilario*, 327 SCRA at 104.

77. *See* 2019 REVISED RULES OF CIVIL PROCEDURE, rule 7, § 3.

78. *Id.*

79. *Id.*

> (1) [the pleading] is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> (2) [t]he 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) [t]he 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) [t]he denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.[80]

The amendment seems to recognize some deplorable practices of litigators. Some lawyers file pleadings that have no sufficient basis in fact or law; some filings could even be intended for malicious purposes. Many lawyers also take for granted the rule requiring a defendant to specifically deny allegations in the complaint. Instead of meticulously going over all the evidence to determine which allegations should be fully or partially admitted and which should be denied, many lawyers simply deny allegations wholesale and in general terms even if a partial or qualified admission is more proper. The inclusion of item (4) above in the certifications that come with a lawyer's signature should address this practice.

The foregoing changes to Section 3, Rule 7 reflect the Supreme Court's earlier pronouncement that the counsel's signature on a pleading or court-bound document is not a mere formality. In *Intestate Estate of Jose Uy v. Atty. Maghari*,[81] the Supreme Court minced no words in ruling that the requirement of counsel's signature on each pleading is in place to facilitate integrity, competence, and credibility in legal practice.[82] The Court said —

> These requirements are not mere frivolities. They are not mere markings on a piece of paper. To willfully disregard them is, thus, to willfully disregard mechanisms put in place to facilitate integrity, competence, and credibility in legal practice; it is to betray apathy for the ideals of the legal profession and demonstrates how one is wanting of the standards for admission to and continuing inclusion in the bar. Worse, to not only willfully disregard them but to feign compliance only, in truth, to make a mockery of them reveals a

80. *Id.*

81. Intestate Estate of Jose Uy v. Maghari III, 768 SCRA 384 (2015).

82. *Id.* at 402.

> dire, wretched, and utter lack of respect for the profession that one brandishes.[83]

Come to think of it, the change is already generally covered by the Lawyer's Oath.[84] The amendment, to the authors' minds, essentially spells out what constitutes "good ground" to support a pleading or court-bound document. Thus, the change should not be understood to be a novel requirement. Nevertheless, the amendment is still a welcome change because it now puts the lawyer on notice of what she should specifically watch out for when preparing and signing a pleading.

More than spelling out what it means to sign a pleading, the amendment adds teeth to make sure that lawyers comply with their duties. The amendment provides the method by which disciplinary action may be imposed against the counsel who violates Section 3, Rule 7. Sanctions may be imposed not only against the responsible counsel, but also his law firm, or any party who violated the rule. In any case, the law firm shall be jointly and severally liable with the responsible partner, associate, or employee. Sanctions may include, but are not 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.[85]

The lawyer or law firm cannot pass on any monetary penalty to the client.[86] This is very stern indeed, and some would even say harsh.

Clearly, the Supreme Court recognized that the old rule was not compelling enough to make sure lawyers fulfill their role as officers of the court and that cases filed have good factual and legal grounds to support them. The significance of counsel's signature in fact complements the many changes introduced in the 2019 Rules, particularly the requirement that pleadings contain evidentiary support. With this, the duty of the lawyer to closely study the facts and applicable law and diligently prepare the case becomes more pronounced.

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83. *Id.*

84. The Lawyer's Oath reads, "I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, or give aid nor consent to the same." RULES OF COURT, rule 144.

85. 2019 REVISED RULES OF CIVIL PROCEDURE, rule 7, § 3 (c).

86. *Id.*

Section 3, Rule 7 also takes away much of the court's discretion to be lenient to the lawyer or law firm unless there are "exceptional circumstances." With the new rule, the law firm may be held liable even if not all of the partners or senior lawyers sign the pleading or court submission. Some may say this will be unfair to the lawyers and the law firm involved, especially to bigger law firms where it may be more difficult to put in place fool-proof checks to make sure that all pleadings and court-bound documents comply with the rules. There is a grain of truth to that. Outside of the amendment in the 2019 rules, it is not sufficiently settled whether law firms have a duty to monitor their members, such that they can have vicarious liability for the acts of their peers.[87] Nevertheless, it should not come as a surprise that many law firms implement a "peer review"[88] program in one shape or another, which can address the threat of vicarious or even solidary liability. Peer review is "the process in which law firm partners or principals monitor and evaluate the job performance of their colleagues."[89] Peer review can include *ex ante* regulation of the quality of legal services prior to the delivery of such services.[90] With these programs, compliance with the new rules should not be too big a hurdle. After all, the rule is meant to put not only the handling lawyers but also law firms on their toes when it comes to ensuring not only that all pleadings and court submissions are signed but, more importantly, that no pleading or submission with frivolous claims or superficial defenses come out the doors of the law office. As they should, senior lawyers and partners of the firm must supervise and check the actions of younger associates. Thus, quality lawyering should be there across the board.

Overall, the change in Section 3, Rule 7 emphasizes that a lawyer should hold his duties in high regard since law practice is imbued with public interest. A lawyer should never ignore the fact that filing or defending a suit has an impact and effect on society at large, and particularly on the life and property rights of the parties involved in the case.[91] This is consistent with the dual but complementary roles of a lawyer where "[o]n one hand, the lawyer is an advocate for the private interests of particular clients[, while o]n the other, she serves as an 'officer of the court' with a separate duty of loyalty to the fair and

87. *See* Susan Saab Fortney, *Am I My Partner's Keeper? Peer Review in Law Firms,* 66 U. COLO. L. REV. 329, 335 (1995).

88. *Id.* at 344.

89. *Id.*

90. *Id.*

91. Petelo v. Atty. Rivera, A.C. No. 10408, Oct. 16, 2019, http://sc.judiciary.gov.ph/8266 (last accessed Sep. 30, 2020).

efficient administration of justice."[92] These roles complement each other because sacrificing one for the other will have a negative effect on both.

Thus, the amended rule should be a welcome addition to make sure that lawyers are on their toes when handling cases in court. It also ensures that frivolous claims and allegations, as well as superficial defenses, do not find their way into court dockets.

2. Party's Verification

Section 4, Rule 7, containing the requirement on verification, was also amended. The rule now adds to and spells out more particularly what it means to verify a pleading. With the new rule, a party's verification of a pleading includes an attestation that

(1) the allegations in the pleading are true and correct based on 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 have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.[93]

Moreover, in general, the verification serves "as a certification of the truthfulness of the allegations in the pleading."[94]

The rule is an expansion of the previous one towards the same end of filtering out frivolous claims and defenses. In *Altres v. Empleo*,[95] the Supreme Court explained the purpose of a verification: "[v]erification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith."[96]

The amendment is significant inasmuch as the Supreme Court recognizes that, like their counsels, litigants are equally responsible for assuring the court

92. Wilkins, *supra* note 2 at 471.

93. 2019 REVISED RULES OF CIVIL PROCEDURE, rule 7, § 4.

94. *Id*.

95. Altres v. Empleo, 573 SCRA 583 (2008).

96. *Id*. at 594 (citing Tan, et al. v. Ballena, et al., 2008, 557 SCRA 229, 248-49 (2008) (citing Bank of the Philippine Islands v. Court of Appeals, 402 SCRA 449, 454 (2003)).

that the case is not motivated by malicious intent and that there is evidentiary support for claims or defenses.

With this change, it also becomes the duty of the lawyer to make sure that the client perfectly understands the consequences of signing a verified pleading. Thus, in relation to the amended rule on the significance of counsel's signature, the lawyer is also duty-bound to keep in check the whims and caprices of clients. In light of the lawyer's dual responsibility to the client and to the public, a lawyer should not simply give in to clients who are only interested in getting a favorable result. Otherwise, the lawyer will be sacrificing his duty to the administration of justice, which will do more harm than good. Lawyers should always remind clients that litigation is a game that must be played by certain rules in order for the administration of justice to work.

C. Unscrupulous Evasion of Legal Processes

Perhaps one of the most frustrating aspects of litigation is the service of court processes and legal documents on unscrupulous, evasive parties. These include demand letters, notices of dishonor, subpoenas, and summonses. There seems to be something about receiving legal processes and notices that does not sit well with litigants in the Philippines — as if by avoiding these processes a party's legal liability can magically disappear. It is, therefore, very common for parties to refuse to acknowledge receipt of legal documents, even those coming from the courts like summonses. This is especially true when serving on a party who lives or holds office in a condominium or gated village.

Parties have somehow evolved the practice of avoiding service or receipt of legal documents by instructing village or building managers, as well as security, to refrain from allowing process servers entry into the village or condominium, thereby preventing them from serving summons on residents or occupants. To address this, the 2019 Rules introduced an ingenious new rule on substituted service of summons. Under Section 6, Rule 14, if personal service of the summons on the defendant is made impossible because of the refusal of the village or building manager to grant entry to the process server, substituted service can be done "by leaving copies of the summons ... 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."[97] With this new rule, the authority of the village or building manager or chief of security to receive summonses on behalf of the defendant is now recognized. It becomes necessary for the defendant, therefore, to obtain a copy of the summons from

97. 2019 REVISED RULES OF CIVIL PROCEDURE, rule 14, § 6.

the said persons. The new rules even take it a step further by recognizing the use of emails in filing and service, including the service of summons.[98]

The amendments also essentially put a stop to the wily practice of parties who appear by "special appearance of counsel" for the limited purpose of questioning jurisdiction over the person when summons was not properly served. Before, it was very convenient to have a case dismissed by motion when summons was improperly served. Two new amendments make this practice extremely difficult today:

(1) a motion to dismiss based on lack of jurisdiction over the person is now prohibited;[99] and

(2) when a lawyer enters 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 the client.[100]

While these are timely and much needed revisions of the rules, they cannot fully address the scope of the problem. Outside of summonses and the valid modes of substituted service under the 2019 Rules, it remains very easy for parties to continue to evade the service of legal and court processes. Thus, until litigants recognize the value and utility (not to mention the propriety) of participating in legal and judicial processes by openly receiving legal notices and documents, the problem is likely to persist.

III. Conclusion

It may be hard to believe, but litigation is perhaps one of the most innovative tools for human cooperation. Along with other dispute resolution mechanisms, it provides an avenue for parties to settle their differences in a cooperative manner. Cooperation is, therefore, the core purpose of litigation. As disputes became more and more complex and rules became increasingly confusing, however, lawyers and litigants began to lose sight of this core purpose of dispute resolution. Nowadays, litigation is associated with purely technical rules, the suppression of truth, delay, and recalcitrant lawyers and parties — very far from being the tool for cooperation that it is.

The problems that plague civil litigation lie in the fact that well-crafted rules per se are insufficient to ensure the orderly administration of justice.

98. *See Id.* rule 13, §§ 3 & 5; & rule 14, § 6.

99. *Id.* rule 15, § 12 (a).

100. *Id.* rule 14, § 13.

Applying legal realism, parties, lawyers, and judges will rarely have a uniform appreciation and interpretation of rules given the view that laws, and rules, are largely indeterminate. This indeterminacy has been explained as follows: "[g]iven the limitations of deductive logic and analogic reasoning and the existence of vague, internally contradictory premises and rules, the realists argue[ ] that it was almost always possible to derive multiple and often inconsistent 'legal' answers to particular problems."[101] In other words, it is inherently easy for people to disagree on the application and interpretation of laws and rules. The result is that it becomes convenient for parties and counsels to justify non-compliance with the rules.

To resolve this problem of indeterminacy, traditionalist propose essentially three kinds of reform: (a) tighten the rules, (b) provide better guidance to lawyers about how ambiguous or contradictory rules ought to be applied, and (c) increase the enforcement of the rules.[102]

There are other, more context-based approaches.[103] Through the significant amendments discussed above, the 2019 Rules seem to encapsulate the first kind of reform. The Rules are now tighter and more particularized than before. Hopefully the other two types of reforms can follow.

To be sure, there will never be a perfect set of rules on the proper conduct of a civil litigation, or any type of litigation for that matter. Even the most rigid of rules per se cannot solve the problems that plague the judicial system. In fact, consistent with legal realism, it can be argued that lawyers, litigants, and courts are "rule-guided" rather than "rule-governed."[104] This can mean that no matter what the rules are, if litigants and lawyers do not adhere to them (neglectfully or purposefully), and if they are not sufficiently guided in

101. Wilkins, *supra* note 2, at 474 (citing Joseph William Singer, *Legal Realism Now*, 76 CAL. L. REV. 467, 470 (1988); Walter Wheeler Cook, *Benjamin N. Cardozo's The Paradoxes of Legal Science*, 38 YALE L.J. 405, 405 (1929) (book review) & William Fisher, *The Development of Modern American Legal Theory and the Judicial Interpretation of the Bill of Rights*, *in* A CULTURE OF RIGHTS THE BILL OF RIGHTS IN PHILOSOPHY, POLITICS, AND LAW 1791 AND 1991 (Michael J. Lacey & Knud Haakonssen eds., 1991)).

102. *See* Wilkins, *supra* note 2, at 499-505.

103. *See generally* Wilkins, *supra* note 2, at 470.

104. E.L. Rissland, et al., *AI and Law: A Fruitful Synergy*, 150 ARTIFICIAL INTELLIGENCE, 4 (2007) (citing ANNE VON DER LEITH GARDNER, AN ARTIFICIAL INTELLIGENCE APPROACH TO LEGAL REASONING 224 (1987)).

rule application and interpretation, rules will not amount to more than mere suggestions on how to conduct a litigation.

As was hopefully shown in this Article, if lawyers and litigants conscientiously play by the rules following their ethical duties, many of the problems encountered by the justice system can be addressed. All stakeholders should, therefore, realize that more than winning in litigation, it pays to play by the rules. It may be a long time before significant improvements are seen, but the 2019 Rules are a step in the right direction.