Discovery in Criminal Proceedings

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I. BACKGROUND

The primary function of discovery in litigation is to enable the parties to discover all relevant facts and evidence. As the Supreme Court explained in *Republic v. Sandiganbayan* —

> [T]he deposition-discovery procedure was designed to remedy the conceded inadequacy and cumbersomeness of the pre-trial functions of notice-giving, issue-formulation[,] and fact revelation theretofore performed primarily by the pleadings.
>
> The various modes or instruments of discovery are meant to serve (1) as a device, along with the pre-trial hearing under Rule 20 [now Rule 18], to narrow and clarify the basic issues between the parties, and (2) as a device for ascertaining the facts relative to those issues. The evident purpose is, to repeat, to enable the parties, consistent with recognized privileges, to obtain the fullest possible knowledge of the issues and facts before civil trials[,] and thus prevent that said trials are carried on in the dark.[1]

The Rules of Court provide for discovery in both civil and criminal proceedings at varying degrees. In civil proceedings, there are five modes of discovery: Rules 23 and 24 *depositions pending actions and depositions before action or pending appeal*,[2] Rule 25 *interrogatories to parties*,[3] Rule 26 *admission by adverse party*,[4] Rule 27 *production or inspection of documents or things*,[5] and Rule 28 *physical and mental examination of persons*.[6] On the other hand, in criminal proceedings, the following provisions are "in-built discovery procedures"[7] Rule 116, Section 10 *production or inspection of material evidence in possession of prosecution*,[8] Rule 119, Sections 12 and 13 *examination of defense witness*,[9] and Rule 119, Section 15 *examination of prosecution witness*.[10] It has also been opined that Rule 116, Section 11 (a), which allows the mental examination of an accused to

1. Republic v. Sandiganbayan, G.R. No. 90478, 204 SCRA 212, 223 (1991).
2. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rules 23 & 24.
3. *Id.* rule 25.
4. *Id.* rule 26.
5. *Id.* rule 27.
6. *Id.* rule 28.
7. People v. Ang, G.R. No. 231854, 957 SCRA 277, 341 (2020) (J. Bernabe, concurring opinion).
8. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 116, § 10.
9. *Id.* rule 119, §§ 12 & 13.
10. *Id.* rule 15.

determine if he is fit to be arraigned and to undergo trial, is a form of discovery.[11]

In contrast to civil discovery, the scope of discovery in criminal proceedings is narrow and limited. For instance, production of material evidence under Rule 116, Section 10 is available only to the accused. Because of this limited nature, litigants have attempted to fill in the "gaps" by suppletorily applying civil discovery rules in criminal cases.[12]

As a rule, if the rules on criminal discovery adequately and squarely cover the situation of a case, then there is no reason to apply the rules on civil discovery suppletorily.[13] If, however, the lack of rule or guidance under criminal discovery would violate the right to due process (either of the accused or of the prosecution), then the Supreme Court has at times allowed the suppletory application of civil discovery rules in criminal proceedings, to "fill the gap," so to speak.[14]

The Court has decided squarely on the suppletory application of civil discovery rules in criminal proceedings in respect to two modes of discovery: *depositions* in Rules 23 and 24 and *admission by adverse party* in Rule 26.

II. RULES 23 AND 24 (DEPOSITIONS) VIS-À-VIS RULE 119, SECTIONS 12, 13, AND 15 (CONDITIONAL EXAMINATION)

Depositions are sworn out-of-court testimonies.[15] The taking of depositions as a mode of discovery and a means to perpetuate testimony is allowed in civil proceedings under Rule 23 for depositions pending action, or under Rule 24 for depositions before action or pending appeal.[16]

11. *Ang*, 957 SCRA at 341-42.

12. *See, e.g.*, Vda. De Manguerra v. Risos, G.R. No. 152643, 563 SCRA 499, 504 (2008).

13. Go v. People, G.R. No. 185527, 677 SCRA 213, 222 (2012) (citing *Vda. De Manguerra*, 563 SCRA at 510).

14. *See, e.g.*, People v. Sergio, G.R. No. 240053. Mar. 21, 2022, *available at* https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68174 (last accessed Oct. 31, 2023).

15. BLACK'S LAW DICTIONARY 534 (10th ed. 2014).

16. REVISED RULES OF CIVIL PROCEDURE, rule 23, § 1 & rule 24, § 1.

The *taking* of depositions has a two-fold purpose: to gather facts or information[17] or to perpetuate testimony.[18] It may be disallowed only if it has no other purpose but to harass, annoy, embarrass, or oppress the deponent.[19]

The *use*, however, of depositions as testimonial evidence, in lieu of in-court testimony, is limited and allowed only under the following cases:

(1) To impeach the testimony of the deponent as a witness; or

(2) As substantive evidence if:

    (a) The deposition is that of the adverse party;

    (b) The witness is dead;

    (c) The witness resides more than 100 kilometers from the place of trial, or is out of the Philippines;

    (d) The witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment;

    (e) The party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

    (f) If there are exceptional circumstances to allow the deposition to be used.[20]

On the other hand, in criminal proceedings, "depositions" take the form of conditional examination of witnesses under Rule 119, Sections 12, 13, and 15.[21] The examination is considered "conditional" because if the witness becomes available to testify during trial, he must testify in court.[22] The testimony taken during the conditional examination may be used as evidence only if the witness is not available to testify in court.[23]

For the accused, he may apply for the conditional examination before trial of his witnesses on the following grounds: (1) the witness is sick or infirm as to afford reasonable ground to believe that he will not be able to attend the trial; (2) the witness resides more than 100 kilometers from the place of trial

17. San Luis v. Rojas, G.R. No. 159127, 547 SCRA 345, 359 (2008).

18. REVISED RULES OF CIVIL PROCEDURE, rule 24, § 1.

19. *San Luis*, 547 SCRA at 364 (2008).

20. REVISED RULES OF CIVIL PROCEDURE, rule 23, § 4 (a) & (c).

21. REVISED RULES OF CRIMINAL PROCEDURE, rule 119, §§ 12, 13, & 15.

22. 1 FLORENZ D. REGALADO, REMEDIAL LAW COMPENDIUM 321 (1997).

23. *Id.* at 321-22.

and has no means to attend the same; or (3) that other similar circumstances exist that would make him unavailable or prevent him from attending the trial.[24] The examination may be taken before a judge or before a lawyer designated by the judge.[25]

For the prosecution, on the other hand, the conditional examination of its witnesses is more restricted. It may be taken on two grounds only: (1) the witness is too sick or infirm to appear at the trial, or (2) the witness has to leave the Philippines with no definite date of returning. Further, the examination may be taken only before the court where the case is pending.[26]

In contrast, the taking of depositions in civil proceedings is more liberal. It does not depend on the availability of the witness to testify during trial.[27] The deposition of a witness may be taken even if he is not sick or infirm or does not reside near the place of trial.[28]

If the conditions for the examination of witnesses in criminal proceedings are not present, can a litigant rely on the more liberal provisions of Rule 23 to justify the examination? In *People v. Webb*,[29] the accused moved to take the deposition of his witnesses in the United States under Rule 24 (now Rule 23), which the prosecution opposed because the said rule should not apply in criminal proceedings.[30] The prosecution argued that Rule 119, Section 4 (now Section 12) is the applicable rule and that it only allows the conditional examination of the accused's witness before and not during trial, and that the said rule does not allow an examination outside the Philippines.[31] The Court (through Justice Consuelo Ynares-Santiago) held that the deposition (under Rule 23) of the accused's witness should not be allowed because it would be merely corroborative.[32] The Court, however, skirted the issue of whether or not Rule 23 was applicable in criminal proceedings as the Court, by its ruling, seemed to have assumed its applicability.[33] Former Chief Justices Hilario G.

24. REVISED RULES OF CIVIL PROCEDURE, rule 119, § 12.

25. *Id.* § 13.

26. *Id.* § 15.

27. *Id.* § 4 (c).

28. *Id.*

29. People v. Webb, G.R. No. 132577, 312 SCRA 573 (1999).

30. *Id.* at 575-77.

31. *Id.* at 577-78.

32. *Id.* at 586.

33. *Id.* at 583-84.

Davide, Jr. and Reynato S. Puno did, however, note the lack of discussion on this issue in their separate opinions.[34]

Former Chief Justice Davide opined that Rule 23 may be applied suppletorily because the rule on conditional examination of witnesses in criminal procedure is silent as to how to take the testimony of a defense witness who is unable to testify in open court due to his residency in a foreign country.[35] He added that denying the deposition would violate the accused's right to due process and right to compulsory process to secure the attendance of his witness.[36]

Former Chief Justice Puno, on the other hand, described briefly the history and evolution of discovery in criminal proceedings in the U.S. and the Philippines' march "towards a more liberal discovery and deposition procedure in criminal cases."[37]

When the issue of Rule 23's applicability in criminal cases reached the Supreme Court, the Court ruled consistently that when the circumstances of the case fall squarely under Rule 119 on conditional examination of witnesses in criminal proceedings, Rule 23 *cannot* be applied suppletorily.[38]

Thus, in *Jaylo v. Sandiganbayan*,[39] the Court, in disallowing the taking of the deposition of the defense witnesses in the U.S., held that "[t]he taking of deposition in criminal cases may be allowed only in exceptional situation[s] in order to prevent a failure of justice."[40]

In *Vda. de Manguerra v. Risos*, the Court ruled that "the conditional examination of a prosecution witness shall be made before the court where the case is pending."[41] The prosecution cannot invoke Rule 23 to justify the conditional examination of its witness outside the court where the case is pending or before any other judge.[42] If Rule 119 adequately and squarely

34. *Id.* at 593 (C.J. Davide, Jr., concurring opinion) & 597 (J. Puno, concurring opinion).

35. *Webb*, 312 SCRA at 595-96 (C.J. Davide, Jr., concurring opinion).

36. *Id.* at 597.

37. *Id.* at 600 (J. Puno, concurring opinion).

38. *See, e.g.*, *Go*, 677 SCRA at 226 & *Vda. de Manguerra*, 563 SCRA at 511.

39. Jaylo v. Sandiganbayan, G.R. No. 111502-04, 370 SCRA 170 (2001).

40. *Id.* at 179.

41. *Vda. de Manguerra*, 563 SCRA at 509.

42. *Id.* at 509-10.

covers the situation, there is "no cogent reason to apply Rule 23 suppletorily."[43]

This ruling was echoed in *Go v. People*, where the Court ruled that the examination of witnesses in criminal cases must be face-to-face and before the judge.[44] The taking of the deposition of a witness in criminal proceedings must be done

> sparingly if it is to guard against accusations of violating the right of the accused to meet the witnesses against him [face-to-face]. Great care must be observed in the taking and use of depositions of prosecution witnesses to the end that no conviction of an accused will rely on *ex parte* affidavits and deposition.[45]

The doctrine in *Jaylo*, *Vda. De Manguerra*, and *Go* was relaxed in 2019 in the case of *People v. Sergio*, which involved the taking of the deposition of Mary Jane Veloso who was imprisoned in Indonesia for drug trafficking.[46] In that case, the Court held that when there are compelling reasons, the Rules of Court may be relaxed and a deposition under Rule 23 be allowed in criminal proceedings.[47]

The Court first noted that the predicament of Veloso was different from the situation in *Go* and *Vda. de Manguerra* because in the latter cases, the witnesses could still testify in court should their physical condition improve.[48] In Veloso's case, however, she was sentenced to death and "cannot even take a single step out of the prison facility of her own volition without facing severe consequences. Her imprisonment in Indonesia and the conditions attached to her reprieve denied her of any opportunity to decide for herself to voluntarily appear and testify."[49]

The Court also noted that the Rules on Criminal Procedure "are silent as to how to take a testimony of a witness who is unable to testify in open court because he is imprisoned in another country."[50] Among other reasons given by the Court in allowing the suppletory application of Rule 23 in Veloso's

43. *Id.* at 510

44. *Go*, 677 SCRA at 219.

45 *Id.* at 226-27.

46. *Sergio*, G.R. No. 240053.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

case, the most compelling one was upholding the right to due process of Veloso and the prosecution, that is to be given "an equal chance to present its evidence in support of a charge."[51] In so ruling, the Court in *Sergio* had relaxed the rule in *Go* that required face-to-face confrontation between the accused and the witness against him.[52] The Court reasoned that the accused's right of confrontation was still protected because they were given the opportunity to cross examine Mary Jane Veloso through written interrogatories.[53] The Court also noted that as an added safeguard, the trial court judge would be present to observe Veloso's demeanor while testifying.[54]

As is stands, therefore, the general rule is that Rule 119, Sections 12, 13, and 15, with its restrictive features, shall govern the conditional examination of witnesses in criminal proceedings.[55] By way of exception, the deposition of witnesses in criminal proceedings may be taken under the more liberal rules found in Rule 23 only if there are compelling reasons.[56] The reason is compelling if it is akin to Veloso's predicament, i.e., being imprisoned in a foreign country for a grave offense.

The restrictive conditions under Rule 119, particularly under Section 15 on the conditional examination of prosecution witnesses, have been criticized, and the rule's liberalization has been suggested. Considering that the rules on discovery under the Philippine Rules of Court were patterned after the U.S. rules of procedure, it may be a good exercise to examine the current rules governing depositions under the *U.S Federal Rules of Criminal Procedure* (2020).[57]

III. U.S. FEDERAL RULES OF CRIMINAL PROCEDURE

Under the U.S. FRCP, a deposition in criminal proceedings, whether for the prosecution or the accused, may be taken in the same manner as a deposition in a civil action.[58] The U.S. FRCP and the U.S. Federal Rules of Civil

51. *Id.*

52. *Sergio*, G.R. No. 240053.

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. FEDERAL RULES OF CRIMINAL PROCEDURE (U.S.) (2020) [hereinafter U.S. FRCP].

58. U.S. FCRP, rule 15 (a). *See also* FEDERAL RULES OF CIVIL PROCEDURE, rules 27 & 30–32 (2022).

Procedure do not require any of the conditions found in the Philippine Rules of Court, that is that the deponent is sick, infirm, resides more than 100 kms from the place of trial, or has to leave the Philippines with no definite date of return.[59]

All that the rules require is that the subject of discovery be relevant, not privileged, and proportional.[60] Thus, the

> [p]arties may obtain discovery regarding any non[-]privileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.[61]

As to the persons before whom the deposition may be taken, the U.S. Federal Rules on Civil Procedure, which governs the manner and taking of depositions in criminal proceedings, provides that if the deposition is taken in the U.S., the deposing officer may be an officer authorized by law to administer oaths or a person appointed by the court; and if taken *outside* the U.S., the deposing officer may be one authorized under a treaty or convention, under a letter of request (letters rogatory), or one who is authorized under U.S. or the foreign country's law, or a person commissioned by the court.[62] Thus, unlike in Philippine rules on criminal procedure, the deposing officer is not limited to the trial court judge.[63] The venue is also not limited to the court where the case is pending.[64]

In criminal depositions, the accused has the right to be present during the deposition, except if he waives this right in writing, or persists in disruptive conduct.[65] The U.S. FRCP also provides that if the deposition was requested

59. *Compare* U.S. FCRP, rule 15 (a) *with* REVISED RULES OF CRIMINAL PROCEDURE, rule 23, § 4 (c).

60. FEDERAL RULES OF CIVIL PROCEDURE, rule 26 (b) (1).

61. *Id.*

62. *Id.* rule 28 (a) (1) & (b) (1).

63. REVISED RULES OF CRIMINAL PROCEDURE, rule 119, § 13.

64. *Id.* § 15.

65. U.S. FRCP, rule 15 (c).

by the government, it must pay the deposition expenses of the defendant, including attorney's fees.[66]

The accused may also not invoke his right to be present at the deposition if the deposition is taken *outside* the U.S. and the following conditions are present:

(a) The witness's testimony could provide substantial proof of a material fact in a felony prosecution;

(b) There is a substantial likelihood that the witness's attendance at trial cannot be obtained;

(c) The witness' presence for a deposition in the United States cannot be obtained;

(d) The defendant cannot be present because:

  (i) The country where the witness is located will not permit the defendant to attend the deposition;

  (ii) For an in-custody defendant, secure transportation and continuing custody cannot be assured at the witness's location; or

  (iii) For an out-of-custody defendant, no reasonable conditions will assure an appearance at the deposition or at trial or sentencing; and

(e) The defendant can meaningfully participate in the deposition through reasonable means.[67]

Applying these guidelines in the case of Veloso, her deposition in Indonesia without the accused being present thereat seems to be justified because: (a) Veloso's testimony was substantial proof of the charge of illegal recruitment, trafficking in persons, and *estafa* against the accused Sergio and Lacalinao; (b) it was impossible for Veloso to testify at trial in the Philippines; (c) it was impossible to depose Veloso in the Philippines; (d) the accused cannot be present at the deposition in Indonesia because the Indonesian government did not allow it; and (e) the accused can meaningfully participate in the deposition through written cross interrogatories.

Whether or not the submission of cross interrogatories is "meaningful participation" in criminal proceedings, however, is not clear-cut. The Court in *Sergio* did not consider the inherent weaknesses of depositions through written interrogatories, particularly the inefficient and ineffective manner of

66. *Id.* rule 15 (d).

67. *Id.* rule 15 (c) (2).

conducting cross examination through cross interrogatories.[68] In *Fortune Corporation v. Court of Appeals*,[69] the Court elucidated that "there are far greater advantages in obtaining the facts and circumstances involved in a confronting examination than in a written one," such as:

> (a) Examination by [written] interrogatories is both more cumbersome and less efficient than oral examination ... .
>
> (b) In actual effectiveness, [written] interrogatories are far inferior to the oral examination ... [because] they give the party to whom they are addressed more time to study their effect, which furnishes a better opportunity to frame protective answers which conceal or evade ... [and] as a means of forcing a specific, detailed[,] and thorough disclosure from a reluctant party, there is a tendency for the interrogatories to grow in number, complexity[,] and variety of form so as to call for as many aspects of the proof as possible, with the result that they often become difficult to administer.[70]

The Court further observed that

> [oral] depositions are preferable if a searching interrogation of the other party is desired. At a deposition, the examining party has great flexibility and can frame his questions on the basis of answers to previous questions. Moreover, the party being examined does not have the opportunity to study the questions in advance and to consult with his attorney before answering, as he does if interrogatories are used. Attempts at evasion, which might be met by a persistent oral examination, cannot be easily dealt with by interrogatories. The flexibility and the potency of oral depositions is mostly lacking in written interrogatories.[71]

IV. RULE 24 (DEPOSITIONS PENDING APPEAL)

As for depositions pending appeal under Rule 24, Former Chief Justice Davide has opined in his separate opinion in *Webb* that said rule is applicable in criminal cases.[72]

68. *Sergio*, G.R. No. 240053.

69. Fortune Corporation v. Court of Appeals, G.R. No. 108119, 229 SCRA 355 (1994).

70. *Id.* at 374-75.

71. *Id.* at 376.

72. *Webb*, 312 SCRA at 593 (C.J. Davide, concurring opinion) (citing 1 REGALADO, *supra* note 22, at 322 (1997)).

V. RULE 26 (ADMISSION BY ADVERSE PARTY)

In civil proceedings, a party may serve upon the other party a request for admission of the genuineness of any material and relevant document or of the truth of any material and relevant matter of fact.[73] If the request is not answered, the matters of which an admission was requested is deemed admitted.[74] The party who does not avail of this mode of discovery is also penalized.[75] He shall not be permitted to present evidence on facts which are, or ought to be, within the personal knowledge of the other party.[76]

In *People v. Ang*, the Court held that the mode of discovery under Rule 26 cannot be utilized in criminal proceedings because —

(1) The State, being the real party in interest in criminal proceedings (with the private complainant being a witness only) cannot be compelled to answer requests for admissions from the accused because the State "cannot be privy to the execution of any document or acquire personal knowledge of past factual events; [77] and

(2) The accused cannot be compelled to answer a request for admission from the prosecution because it would violate his right to remain silent and right against self-incrimination.[78]

Rule 26 does not have a comparable provision in the rules on criminal procedure.[79] Additionally, there is also no comparable rule in the U.S. FRCP and the *ABA Standards for Criminal Justice: Discovery*. Justice Rodil V. Zalameda noted this absence as evidence that requests for admission are not applicable in criminal proceedings.[80]

Justice Alfredo Benjamin S. Caguioa, however, had a contrary and a more liberal opinion. Although he agreed that Rule 26, as it is currently worded, cannot be applied in criminal proceedings, he believed that given the disproportionate amount of resources between the government and the

73. REVISED RULES OF CIVIL PROCEDURE, rule 26, § 1.

74. *Id.* § 2.

75. *Id.* § 5.

76. *Id.*

77. *Ang*, 957 SCRA at 324-25.

78. *Id.* at 325.

79. *Id.* at 342 (J. Perlas-Bernabe, concurring opinion).

80. *Id.* at 400-01 (J. Zalameda, concurring opinion).

accused, the accused should be allowed to request admissions from the prosecution or its witnesses, if only to expedite the proceedings and to expose meritless charges.[81] Justice Caguioa, however, recognized a limitation to this right that the matters for admission cannot be the elements of the crime charged.[82]

As it stands, requests for admissions under Rule 26 cannot be utilized in criminal proceedings.

VI. RULE 27 (PRODUCTION OR INSPECTION OF DOCUMENTS OR THINGS) VIS-À-VIS RULE 116, SECTION 10 (PRODUCTION OF MATERIAL EVIDENCE BY PROSECUTION)

In civil proceedings, a party may, upon good cause shown, ask the court to order the other party to (a) produce and permit the inspection and copying or photographing of documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged; or (b) permit entry upon land or other property for the purpose of inspecting, measuring, surveying, or photographing the property, or any relevant object or operation thereon.[83]

A party who refuses to obey such an order may incur any of the following sanctions:

(1) The character or description of the thing or land, or the contents of the paper, or any other designated facts shall be taken to be established;

(2) He will be prohibited from introducing in evidence the designated documents or things;

(3) The striking out of his pleadings or parts thereof;

(4) The staying of further proceedings until the order to produce is obeyed;

(5) Dismissal of the action;

(6) Judgment by default against him; and

(7) His arrest.[84]

81. *Id.* at 373 (J. Caguioa, concurring and dissenting opinion).

82. *Id.* at 376-77.

83. REVISED RULES OF CIVIL PROCEDURE, rule 27, § 1.

84. *Id.* rule 29, § 3.

This mode of discovery under Rule 27 has a counterpart in criminal procedure, which is found under Rule 116, Section 10, or the rule on production of material evidence by the prosecution.[85]

While the parties in civil proceedings have a mutual obligation to produce documents or things or to allow their inspection, the obligation to produce documents or things in criminal proceedings is one-sided.[86] Only the prosecution, the police, and other investigating officers have the obligation to produce material evidence requested by the accused.[87] The accused, on the other hand, cannot be compelled to produce his evidence because this would violate his constitutional right not to be compelled to be a witness against himself.[88] Thus, in the early case of *Beltran v. Samson*,[89] the Court held that an accused cannot be compelled to be a witness against himself and that this prohibition is not limited to giving testimony, "but extends to all giving or furnishing of evidence[,]" including producing documents or objects in one's possession.[90]

In *Webb v. De Leon*,[91] the Court acknowledged that the right of the accused to compel the disclosure of evidence against him can be availed of even before an indictment.[92] Thus, Rule 116, Section 10 applies even in the preliminary investigation stage. Following the doctrine in *Brady v. Maryland*,[93] the Court in *Webb* also acknowledged that the prosecution's obligation includes disclosing exculpatory evidence.[94]

The sanctions for refusal to obey a production order in civil cases are provided under Section 3, Rule 29. On the other hand, the sanctions for refusal to obey a production order in criminal cases are not provided by the rules. It has, however, been opined that Section 3, Rule 29 can be suppletorily applied in criminal cases.[95]

85. REVISED RULES OF CRIMINAL PROCEDURE, rule 116, § 10.

86. REVISED RULES OF CIVIL PROCEDURE, rule 26, § 1.

87. REVISED RULES OF CRIMINAL PROCEDURE, rule 116, § 10.

88. PHIL. CONST. art. III, § 17.

89. Beltran v. Samson, 53 Phil. 570 (1929).

90. *Id.* at 574.

91. Webb v. De Leon, G.R. No. 121234, 247 SCRA 652 (1995).

92. *Id.* at 688.

93. Brady v. Maryland, 373 U.S. 83 (1963).

94. *De Leon*, 247 SCRA at 688.

95. TRANQUIL GERVACIO S. SALVADOR III, CRIMINAL PROCEDURE 306-07 (2019).

In sum, given that there is a rule on production of documents in criminal proceedings, there is no reason to apply Rule 27 suppletorily in criminal cases.

VII. U.S. FEDERAL RULES OF CRIMINAL PROCEDURE

Under the U.S. FRCP, the prosecution has the obligation to disclose to the accused his oral and written statements taken before or after his arrest, the summary of expert witness statements, the defendant's prior criminal record, and documents or objects in the government's possession (including reports of any physical or mental examination and of any scientific test or experiment) that are material to preparing the defense, or which the government will use as its evidence.[96]

Unlike in the Philippines, however, the accused in the U.S. who had made a prior request for disclosure from the government has the obligation to disclose his evidence (including reports of examinations and test and expert witness statements) to the prosecution.[97] *Quid pro quo*.

Also unlike in Philippine Rules of Court, the sanctions for non-compliance under the U.S. FRCP are written out, and they include prohibiting the disobeying party from introducing the undisclosed evidence or entering any other order that is just under the circumstances.[98]

VIII. RULE 28 (PHYSICAL OR MENTAL EXAMINATION OF A PARTY) VIS-À-VIS RULE 116, SECTION 11 (MENTAL EXAMINATION OF ACCUSED OF UNSOUND MIND)

In civil actions where the mental or physical condition of a party is in controversy, a party may, for good cause shown, ask the court to order the other party to submit to a physical or mental examination by a physician.[99] The sanctions for refusal to obey an order to be physically or mentally examined in civil cases are provided under Section 3, Rule 29, the same sanctions for disobeying a production order.[100]

96. FRCP, rule 16 (a) (1).

97. *Id.* rule 16 (b).

98. *Id.* rule 16 (d) (2).

99. REVISED RULES OF CRIMINAL PROCEDURE, rule 116, § 11 (a).

100. REVISED RULES OF CIVIL PROCEDURE, rule 29, § 3.

The mode of discovery under Rule 28 is said to have a comparable provision in criminal procedure, that which is found under Rule 116, Section 11, on the mental examination of the accused of unsound mind.[101]

Unlike Rule 28, however, Rule 116, Section 11 is limited to the examination of the mental state of the accused at the time of the criminal proceedings for the sole purpose of determining if he can stand trial.[102] It does not provide for rules on the physical examination of the accused (such as DNA testing) or the mental or physical examination of the witnesses.[103] There is also no specific rule for the mental examination of the accused for the purpose of substantiating his defense of insanity.[104]

Following the reasoning in *Ang*, Rule 28 — as it is currently worded — cannot be applied in criminal cases because the State, being the real party in interest, and for obvious reasons, cannot be the subject of a mental or physical examination.[105]

As for the mental examination of the accused (to substantiate his defense of insanity) and his physical examination, there is jurisprudence on this issue.

In *People v. Paña*,[106] the Court, in redefining the requisites of insanity as an exempting circumstance, held that "judges must be given leeway to order the mental examination of the accused either through discovery procedures or as an incident of trial."[107]

As for the physical examination of the accused, such as taking blood samples for DNA testing, the Court in *People v. Yatar*,[108] held that an accused "may be compelled to submit to fingerprinting, photographing, paraffin, blood[,] and DNA, as there is no testimonial compulsion involved. ... The accused may be compelled to submit to a physical examination to determine his involvement in an offense of which he is accused."[109]

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101. *Ang*, 957 SCRA at 341-42 (J. Perlas-Bernabe, concurring opinion).

102. REVISED RULES OF CRIMINAL PROCEDURE, rule 116, § 11 (a).

103. *See id.*

104. *Id.*

105. *See Ang*, 957 SCRA at 280.

106. People v. Paña, G.R. No. 214444, 963 SCRA 138 (2020).

107. *Id.* at 179-80.

108. People v. Yatar, G.R. No. 150224, 428 SCRA 504 (2004).

109. *Id.* at 518.

IX. ABA STANDARDS FOR CRIMINAL JUSTICE: DISCOVERY

Under Standard 11-2.4 of the ABA Standards for Criminal Justice: Discovery, if the court finds that an examination of the accused may produce evidence that is material to the determination of the issues in the case, the procedure is reasonable and will be conducted in a manner which does not involve an unreasonable intrusion of the body or an unreasonable affront to the dignity of the accused, and the request is reasonable and comports with applicable law, the accused:

> (1) May be ordered by the court to permit the taking of his fingerprints, photographs, handwriting exemplars, or voice exemplars;
>
> (2) The taking of specimens of his blood, urine, saliva, breath, hair, nails, or other materials of the body;
>
> (3) To have the accused appear, move, or speak for identification in a lineup, or try on clothing or other articles;
>
> (4) To submit to a reasonable physical or medical inspection of the body;
>
> (5) To submit to a reasonable mental health examination; or
>
> (6) To participate in other reasonable and appropriate procedures.[110]

May a witness, either for the prosecution or defense, be compelled to take a mental or physical examination?

There is no rule that prohibits the mental or physical examination of a witness, if it is relevant to the issue, or to the witness' competence and credibility, and provided it does not violate any of the rights of the witness under Section 3, Rule 132.[111] Indeed, if an accused who has more rights than

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110. AMERICAN BAR ASSOCIATION CRIMINAL JUSTICE STANDARDS COMMITTEE, ABA STANDARDS FOR CRIMINAL JUSTICE: DISCOVERY standard 11-2.4 (4th ed. 2020) [hereinafter ABA STANDARDS].

111. 2019 AMENDMENTS TO THE 1989 REVISED RULES ON EVIDENCE, rule 132, § 3.

> Section 3. Rights and Obligations of a Witness. — A witness must answer questions, although his or her answer may tend to establish a claim against him or her. However, it is the right of a witness:
>
> (1) To be protected from irrelevant, improper, or insulting questions, and from harsh or insulting demeanor;
> (2) Not to be detained longer than the interests of justice require;
> (3) Not to be examined[,] except only as to matters pertinent to the issue;

an ordinary witness may be compelled to take a mental or physical examination, an ordinary witness may likewise be compelled, within the parameters above stated.

Section 3, Rule 28 provides that if the party who was examined requests a copy of the report of the examining physician, the party causing the examination to be made shall be entitled to receive from the party examined a like report of any examination, previously or thereafter made, of the same mental or physical condition.[112]

In addition, Section 4 of the same Rule provides that —

> [b]y requesting and obtaining a report of the examination so ordered ... the party examined waives any privilege he or she may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him or her in respect of the same mental or physical examination.[113]

As to whether this "waiver of privilege" will apply in criminal proceedings, the rules are silent.

X. U.S. FRCP

In the U.S., the rule is *quid pro quo*. If the accused requests disclosure from the government of the results or reports of any physical or mental examination, the accused must permit the government to inspect and to copy or photograph the results or reports of any physical or mental examination in his possession and which he intends to use in trial.[114] This rule is similar to Section 3, Rule 28.[115]

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(4) Not to give an answer which will tend to subject him or her to a penalty for an offense unless otherwise provided by law; or

(5) Not to give an answer which will tend to degrade his or her reputation, unless it be to the very fact at issue or to a fact from which the fact in issue would be presumed. But a witness must answer to the fact of his or her previous final conviction for an offense.

Id.

112. REVISED RULES OF CIVIL PROCEDURE, rule 28, § 3.

113. *Id*. § 4.

114. U.S. FRCP, rule 16 (b).

115. *See* REVISED RULES OF CIVIL PROCEDURE, rule 28, § 3.

XI. RULE 25 (INTERROGATORIES TO PARTIES)

The last mode of discovery to be discussed is Interrogatories to Parties under Rule 25. This rule allows a party in a civil proceeding, who desires to elicit material and relevant facts from an adverse party, to file and serve upon the latter written interrogatories to be answered by him or her under oath.[116] Interrogatories may relate to any matters that can be inquired into in a deposition.[117] If a party refuses to answer any interrogatory submitted under this rule, the person who submitted the interrogatory may ask the court for an order to compel an answer.[118] Refusal to obey an order to answer will warrant sanctions under Section 3, Rule 28 (the same sanctions as refusal to obey a production order or an order to be examined), and may also be considered as contempt of court.[119]

A party who does not avail of this mode of discovery may not compel the other party who was not served with written interrogatories to give testimony in open court, or to give a deposition pending appeal.[120]

Similar to Rule 26 (admission by adverse party), Rule 25 does not have a counterpart in the rules of criminal procedure.[121] In the U.S., the U.S. FRCP and the ABA Standards also do not provide for a rule on interrogatories to parties in criminal proceedings.[122]

The Supreme Court has not decided squarely on the suppletory application of Rule 25 in criminal proceedings. But following the reasoning in *Ang*, Rule 25 also cannot be applied in criminal cases because (a) the State (being the real party in interest in criminal proceedings) "cannot be privy to the execution of any document or acquire personal knowledge of past factual events[;]" and (b) the accused cannot be compelled to answer written interrogatories from the prosecution because it would violate his right to remain silent and right against self-incrimination.[123]

116. *Id.* rule 25, § 1.

117. *Id.* § 6.

118. *Id.* rule 29, § 1.

119. *Id.* § 2.

120. *Id.* rule 25, § 6.

121. *See* REVISED RULES OF CRIMINAL PROCEDURE, rules 110-127.

122. *See* FRCP, rules 1-61 & ABA STANDARDS, *supra* note 110.

123. *Ang*, 957 SCRA at 325.

XII. CONCLUSION

In sum, the modes of discovery in civil proceedings cannot be made to apply suppletorily in criminal proceedings, unless there is a compelling reason such as denial of due process.

In particular, Rule 119, Sections 12, 13, and 15 shall govern the conditional examination or deposition-taking in criminal proceedings, but the more liberal Rule 23 may be suppletorily applied in criminal proceedings if there are compelling reasons why the deponent cannot be examined under Rule 119. Conversely, Rule 26 (admission by adverse party) cannot be suppletorily applied in criminal cases. Rule 27 (Production or Inspection of Documents or Things) does not apply in criminal cases because Rule 116, Section 10 is the applicable rule in criminal cases. While Rule 28 (Physical or mental examination of party) does not apply in criminal cases, there are rules and jurisprudence that allow the mental or physical examination of the accused or witness in criminal proceedings. Finally, Rule 25 (interrogatories to parties) is also deemed inapplicable in criminal cases, consistent with the reasoning established in *Ang*.