



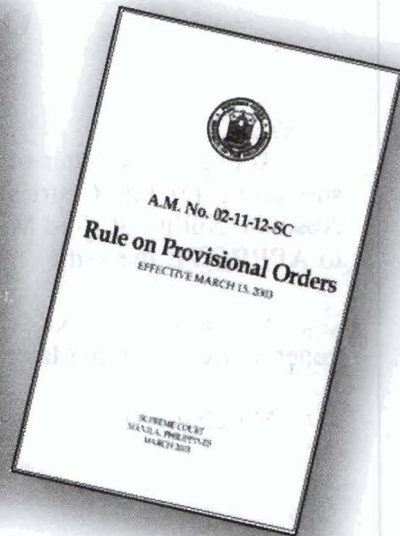
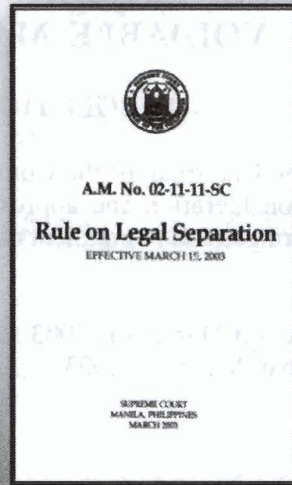
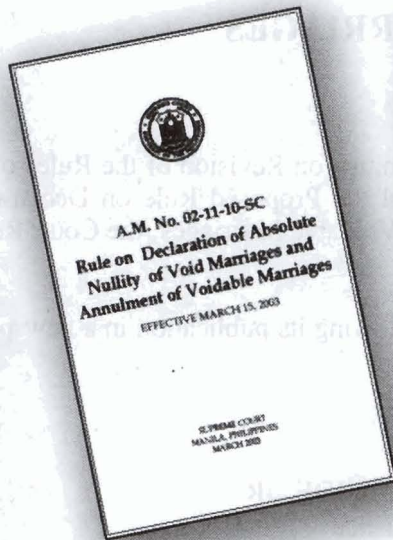
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Republic of the Philippines
Supreme Court
Manila

EN BANC

A. M. No. 02-11-10-SC

**RE: PROPOSED RULE ON DECLARATION OF ABSOLUTE
NULLITY OF VOID MARRIAGES AND ANNULMENT
OF VOIDABLE MARRIAGES**

RESOLUTION

Acting on the letter of the Chairman of the Committee on Revision of the Rules of Court submitting for this Court's consideration and approval the Proposed Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages, the Court Resolved to **APPROVE** the same.

The Rule shall take effect on March 15, 2003 following its publication in a newspaper of general circulation not later than March 7, 2003.

March 4, 2003.

(Sgd.) HILARIO G. DAVIDE, JR.
Chief Justice

(Sgd.) JOSUE N. BELLOSILLO
Associate Justice

(Sgd.) REYNATO S. PUNO
Associate Justice

It is my understanding that neither Santos nor Molina has been made irrelevant, let alone necessarily overturned by the new rules.

(Sgd.) JOSE C. VITUG
Associate Justice

(Sgd.) VICENTE V. MENDOZA
Associate Justice

Please see dissenting opinion on Rule relating to psychological incapacity.

(Sgd.) ARTEMIO V. PANGANIBAN
Associate Justice

(Sgd.) LEONARDO A. QUISUMBING
Associate Justice

(on leave)

CONSUELO YÑARES-SANTIAGO
Associate Justice

(Sgd.) ANGELINA SANDOVAL-GUTIERREZ
Associate Justice

(Sgd.) ANTONIO T. CARPIO
Associate Justice

(Sgd.) MA. ALICIA AUSTRIA-MARTINEZ
Associate Justice

(on leave)

RENATO C. CORONA
Associate Justice

(Sgd.) CONCHITA CARPIO-MORALES
Associate Justice

(Sgd.) ROMEO J. CALLEJO, SR.
Associate Justice

(Sgd.) ADOLFO S. AZCUNA
Associate Justice

**RULE ON
DECLARATION OF ABSOLUTE NULLITY OF VOID MARRIAGES
AND
ANNULMENT OF VOIDABLE MARRIAGES**

SECTION 1. *Scope.*— This Rule shall govern petitions for declaration of absolute nullity of void marriages and annulment of voidable marriages under the Family Code of the Philippines.

The Rules of Court shall apply suppletorily.

SEC. 2. *Petition for declaration of absolute nullity of void marriages.*—

- (a) *Who may file.*— A petition for declaration of absolute nullity of void marriage may be filed solely by the husband or the wife. (n)
- (b) *Where to file.*— The petition shall be filed in the Family Court.
- (c) *Imprescriptibility of action or defense.*— An action or defense for the declaration of absolute nullity of void marriage shall not prescribe.
- (d) *What to allege.*— A petition under Article 36 of the Family Code shall specifically allege the complete facts showing that either or both parties were psychologically incapacitated from complying with the essential marital obligations of marriage at the time of the celebration of marriage even if such incapacity becomes manifest only after its celebration.

The complete facts should allege the physical manifestations, if any, as are indicative of psychological incapacity at the time of the celebration of the marriage, but expert opinion need not be alleged.

SEC. 3. *Petition for annulment of voidable marriages.*—

- (a) *Who may file.*— The following persons may file a petition for annulment of voidable marriage based on any of the grounds under Article 45 of the Family Code and within the period herein indicated:
 - (1) The contracting party whose parent, or guardian, or person exercising substitute parental authority did not give his or her consent, within five years after attaining the age of twenty-one unless, after attaining the age of twenty-one, such party freely cohabited with the other as husband or wife; or the parent, guardian or person having legal charge of the contracting party, at any time before such party has reached the age of twenty-one;
 - (2) The sane spouse who had no knowledge of the other's insanity; or by any relative, guardian, or person having legal charge of the insane, at any time before the death of either party; or by the insane spouse during a lucid interval or after regaining sanity, provided that the petitioner, after coming to reason, has not freely cohabited with the other as husband or wife;
 - (3) The injured party whose consent was obtained by fraud, within five years after the discovery of the fraud, provided that said party, with full knowledge of the facts constituting the fraud, has not freely cohabited with the other as husband or wife;
 - (4) The injured party whose consent was obtained by force, intimidation, or undue influence, within five years from the time the force, intimidation, or undue influence disappeared or

ceased, provided that the force, intimidation, or undue influence having disappeared or ceased, said party has not thereafter freely cohabited with the other as husband or wife;

- (5) The injured party where the other spouse is physically incapable of consummating the marriage with the other and such incapacity continues and appears to be incurable, within five years after the celebration of marriage; and
- (6) The injured party where the other party was afflicted with a sexually-transmissible disease found to be serious and appears to be incurable, within five years after the celebration of marriage.

(b) *Where to file.*— The petition shall be filed in the Family Court.

SEC. 4. *Venue.*—The petition shall be filed in the Family Court of the province or city where the petitioner or the respondent has been residing for at least six months prior to the date of filing, or in the case of a non-resident respondent, where he may be found in the Philippines, at the election of the petitioner.

SEC. 5. *Contents and form of petition.*—

- (1) The petition shall allege the complete facts constituting the cause of action.
- (2) It shall state the names and ages of the common children of the parties and specify the regime governing their property relations, as well as the properties involved.

If there is no adequate provision in a written agreement between the parties, the petitioner may apply for a provisional order for spousal support, custody and support of common children, visitation rights, administration of community or conjugal property, and other matters similarly requiring urgent action.

- (3) It must be verified and accompanied by a certification against forum shopping. The verification and certification must be signed personally by the petitioner. No petition may be filed solely by counsel or through an attorney-in-fact.

If the petitioner is in a foreign country, the verification and certification against forum shopping shall be authenticated by the duly authorized officer of the Philippine embassy or legation, consul general, consul or vice-consul or consular agent in said country.

- (4) It shall be filed in six copies. The petitioner shall serve a copy of the petition on the Office of the Solicitor General and the Office of the City or Provincial Prosecutor, within five days from the date of its filing and submit to the court proof of such service within the same period.

Failure to comply with any of the preceding requirements may be a ground for immediate dismissal of the petition.

SEC. 6. *Summons.*— The service of summons shall be governed by Rule 14 of the Rules of Court and by the following rules:

- (1) Where the respondent cannot be located at his given address or his whereabouts are unknown and cannot be ascertained by diligent inquiry, service of summons may, by leave of court, be effected upon him by publication once a week for two consecutive weeks in a newspaper of general circulation in the Philippines and in such places as the court may order. In addition, a copy of the summons shall be served on the respondent at his last known address by registered mail or any other means the court may deem sufficient.

- (2) The summons to be published shall be contained in an order of the court with the following data:
 - (a) Title of the case;
 - (b) Docket number;
 - (c) Nature of the petition;
 - (d) Principal grounds of the petition and the reliefs prayed for; and
 - (e) A directive for the respondent to answer within thirty (30) days from the last issue of publication.

SEC. 7. *Motion to dismiss.*— No motion to dismiss the petition shall be allowed except on the ground of lack of jurisdiction over the subject matter or over the parties; provided, however, that any other ground that might warrant a dismissal of the case may be raised as an affirmative defense in an answer.

SEC. 8. *Answer.*—

- (1) The respondent shall file his answer within fifteen (15) days from service of summons, or within thirty (30) days from the last issue of publication in case of service of summons by publication. The answer must be verified by the respondent himself and not by counsel or attorney-in-fact.
- (2) If the respondent fails to file an answer, the court shall not declare him or her in default.
- (3) Where no answer is filed or if the answer does not tender an issue, the court shall order the public prosecutor to investigate whether collusion exists between the parties.

SEC. 9. *Investigation report of public prosecutor.*—

- (1) Within one month after receipt of the court order mentioned in paragraph (3) of Section 8 above, the public prosecutor shall submit a report to the court stating whether the parties are in collusion and serve copies thereof on the parties and their respective counsels, if any.
- (2) If the public prosecutor finds that collusion exists, he shall state the basis thereof in his report. The parties shall file their respective comments on the finding of collusion within ten (10) days from receipt of a copy of the report. The court shall set the report for hearing and if convinced that the parties are in collusion, it shall dismiss the petition.
- (3) If the public prosecutor reports that no collusion exists, the court shall set the case for pre-trial. It shall be the duty of the public prosecutor to appear for the State at the pre-trial.

SEC. 10. *Social worker.*— The court may require a social worker to conduct a case study and submit the corresponding report at least three (3) days before the pre-trial. The court may also require a case study at any stage of the case whenever necessary.

SEC. 11. *Pre-trial.*—

- (1) *Pre-trial mandatory.*— A pre-trial is mandatory. On motion or *motu proprio*, the court shall set the pre-trial after the last pleading has been served and filed, or upon receipt of the report of the public prosecutor that no collusion exists between the parties.
- (2) *Notice of pre-trial.*—
 - (a) The notice of pre-trial shall contain:

- (1) The date of pre-trial conference; and
 - (2) An order directing the parties to file and serve their respective pre-trial briefs in such manner as shall ensure the receipt thereof by the adverse party at least three days before the date of pre-trial.
- (b) The notice shall be served separately on the parties and their respective counsels as well as on the public prosecutor. It shall be their duty to appear personally at the pre-trial.
- (c) Notice of pre-trial shall be sent to the respondent even if he fails to file an answer. In case of summons by publication and the respondent failed to file his answer, notice of pre-trial shall be sent to respondent at his last known address.

SEC. 12. *Contents of pre-trial brief.*— The pre-trial brief shall contain the following:

- (a) A statement of the willingness of the parties to enter into agreements as may be allowed by law, indicating the desired terms thereof;
- (b) A concise statement of their respective claims together with the applicable laws and authorities;
- (c) Admitted facts and proposed stipulations of facts, as well as the disputed factual and legal issues;
- (d) All the evidence to be presented, including expert opinion, if any, briefly stating or describing the nature and purpose thereof;
- (e) The number and names of the witnesses and their respective affidavits; and
- (f) Such other matters as the court may require.

Failure to file the pre-trial brief or to comply with its required contents shall have the same effect as failure to appear at the pre-trial under the succeeding paragraphs.

SEC. 13. *Effect of failure to appear at the pre-trial.*—

- (a) If the petitioner fails to appear personally, the case shall be dismissed unless his counsel or a duly authorized representative appears in court and proves a valid excuse for the non-appearance of the petitioner.
- (b) If the respondent has filed his answer but fails to appear, the court shall proceed with the pre-trial and require the public prosecutor to investigate the non-appearance of the respondent and submit within fifteen (15) days thereafter a report to the court stating whether his non-appearance is due to any collusion between the parties. If there is no collusion, the court shall require the public prosecutor to intervene for the State during the trial on the merits to prevent suppression or fabrication of evidence.

SEC. 14. *Pre-trial conference.*— At the pre-trial conference, the court:

- (a) May refer the issues to a mediator who shall assist the parties in reaching an agreement on matters not prohibited by law.

The mediator shall render a report within one month from referral which, for good reasons, the court may extend for a period not exceeding one month.

- (b) In case mediation is not availed of or where it fails, the court shall proceed with the pre-trial conference, on which occasion it shall consider the advisability of receiving expert testimony and such other matters as may aid in the prompt disposition of the petition.

SEC. 15. *Pre-trial order.*—

- (a) The proceedings in the pre-trial shall be recorded. Upon termination of the pre-trial, the court shall issue a pre-trial order which shall recite in detail the matters taken up in the conference, the action taken thereon, the amendments allowed on the pleadings, and, except as to the ground of declaration of nullity or annulment, the agreements or admissions made by the parties on any of the matters considered, including any provisional order that may be necessary or agreed upon by the parties.
- (b) Should the action proceed to trial, the order shall contain a recital of the following:
 - (1) Facts undisputed, admitted, and those which need not be proved subject to Section 16 of this Rule;
 - (2) Factual and legal issues to be litigated;
 - (3) Evidence, including objects and documents, that have been marked and will be presented;
 - (4) Names of witnesses who will be presented and their testimonies in the form of affidavits; and
 - (5) Schedule of the presentation of evidence.
- (c) The pre-trial order shall also contain a directive to the public prosecutor to appear for the State and take steps to prevent collusion between the parties at any stage of the proceedings and fabrication or suppression of evidence during the trial on the merits.
- (d) The parties shall not be allowed to raise issues or present witnesses and evidence other than those stated in the pre-trial order. The order shall control the trial of the case, unless modified by the court to prevent manifest injustice.
- (e) The parties shall have five (5) days from receipt of the pre-trial order to propose corrections or modifications.

SEC. 16. *Prohibited compromise.*— The court shall not allow compromise on prohibited matters, such as the following:

- (a) The civil status of persons;
- (b) The validity of a marriage or of a legal separation;
- (c) Any ground for legal separation;
- (d) Future support;
- (e) The jurisdiction of courts; and
- (f) Future legitime.

SEC. 17. *Trial.*—

- (1) The presiding judge shall personally conduct the trial of the case. No delegation of the reception of evidence to a commissioner shall be allowed except as to matters involving property relations of the spouses.
- (2) The grounds for declaration of absolute nullity or annulment of marriage must be proved. No judgment on the pleadings, summary judgment, or confession of judgment shall be allowed.

- (3) The court may order the exclusion from the courtroom of all persons, including members of the press, who do not have a direct interest in the case. Such an order may be made if the court determines on the record that requiring a party to testify in open court would not enhance the ascertainment of truth; would cause to the party psychological harm or inability to effectively communicate due to embarrassment, fear, or timidity; would violate the right of a party to privacy; or would be offensive to decency or public morals.
- (4) No copy shall be taken nor any examination or perusal of the records of the case or parts thereof be made by any person other than a party or counsel of a party, except by order of the court.

SEC. 18. *Memoranda.* – The court may require the parties and the public prosecutor, in consultation with the Office of the Solicitor General, to file their respective memoranda in support of their claims within fifteen (15) days from the date the trial is terminated. It may require the Office of the Solicitor General to file its own memorandum if the case is of significant interest to the State. No other pleadings or papers may be submitted without leave of court. After the lapse of the period herein provided, the case will be considered submitted for decision, with or without the memoranda.

SEC. 19. *Decision.* –

- (1) If the court renders a decision granting the petition, it shall declare therein that the decree of absolute nullity or decree of annulment shall be issued by the court only after compliance with Articles 50 and 51 of the Family Code as implemented under the Rule on Liquidation, Partition and Distribution of Properties.
- (2) The parties, including the Solicitor General and the public prosecutor, shall be served with copies of the decision personally or by registered mail. If the respondent summoned by publication failed to appear in the action, the dispositive part of the decision shall be published once in a newspaper of general circulation.
- (3) The decision becomes final upon the expiration of fifteen (15) days from notice to the parties. Entry of judgment shall be made if no motion for reconsideration or new trial, or appeal is filed by any of the parties, the public prosecutor, or the Solicitor General.
- (4) Upon the finality of the decision, the court shall forthwith issue the corresponding decree if the parties have no properties.

If the parties have properties, the court shall observe the procedure prescribed in Section 21 of this Rule.

The entry of judgment shall be registered in the Civil Registry where the marriage was recorded and in the Civil Registry where the Family Court granting the petition for declaration of absolute nullity or annulment of marriage is located.

SEC. 20. *Appeal.* –

- (1) *Pre-condition.* – No appeal from the decision shall be allowed unless the appellant has filed a motion for reconsideration or new trial within fifteen (15) days from notice of judgment.
- (2) *Notice of appeal.* – An aggrieved party or the Solicitor General may appeal from the decision by filing a Notice of Appeal within fifteen (15) days from notice of denial of the motion for reconsideration or new trial. The appellant shall serve a copy of the notice of appeal on the adverse parties.

SEC. 21. *Liquidation, partition and distribution, custody, support of common children and delivery*

of their presumptive legitimes. – Upon entry of the judgment granting the petition, or, in case of appeal, upon receipt of the entry of judgment of the appellate court granting the petition, the Family Court, on motion of either party, shall proceed with the liquidation, partition and distribution of the properties of the spouses, including custody, support of common children and delivery of their presumptive legitimes pursuant to Articles 50 and 51 of the Family Code unless such matters had been adjudicated in previous judicial proceedings.

SEC. 22. Issuance of Decree of Declaration of Absolute Nullity or Annulment of Marriage. –

(a) The court shall issue the Decree after:

- (1) Registration of the entry of judgment granting the petition for declaration of nullity or annulment of marriage in the Civil Registry where the marriage was celebrated and in the Civil Registry of the place where the Family Court is located;
- (2) Registration of the approved partition and distribution of the properties of the spouses, in the proper Register of Deeds where the real properties are located; and
- (3) The delivery of the children's presumptive legitimes in cash, property, or sound securities.

(b) The court shall quote in the Decree the dispositive portion of the judgment entered and attach to the Decree the approved deed of partition.

Except in the case of children under Articles 36 and 53 of the Family Code, the court shall order the Local Civil Registrar to issue an amended birth certificate indicating the new civil status of the children affected.

SEC. 23. Registration and publication of the decree; decree as best evidence. –

- (a) The prevailing party shall cause the registration of the Decree in the Civil Registry where the marriage was registered, the Civil Registry of the place where the Family Court is situated, and in the National Census and Statistics Office. He shall report to the court compliance with this requirement within thirty (30) days from receipt of the copy of the Decree.
- (b) In case service of summons was made by publication, the parties shall cause the publication of the Decree once in a newspaper of general circulation.
- (c) The registered Decree shall be the best evidence to prove the declaration of absolute nullity or annulment of marriage and shall serve as notice to third persons concerning the properties of petitioner and respondent as well as the properties or presumptive legitimes delivered to their common children.

SEC. 24. Effect of death of a party; duty of the Family Court or Appellate Court. –

- (a) In case a party dies at any stage of the proceedings before the entry of judgment, the court shall order the case closed and terminated, without prejudice to the settlement of the estate in proper proceedings in the regular courts.
- (b) If the party dies after the entry of judgment of nullity or annulment, the judgment shall be binding upon the parties and their successors in interest in the settlement of the estate in the regular courts.

SEC. 25. Effectivity. – This Rule shall take effect on March 15, 2003 following its publication in a newspaper of general circulation not later than March 7, 2003.

Republic of the Philippines
Supreme Court
Manila

EN BANC

A. M. No. 02-11-11-SC

RE: PROPOSED RULE ON LEGAL SEPARATION

RESOLUTION

Acting on the letter of the Chairman of the Committee on Revision of the Rules of Court submitting for this Court's consideration and approval the Proposed Rule on Legal Separation, the Court Resolved to **APPROVE** the same.

The Rule shall take effect on March 15, 2003 following its publication in a newspaper of general circulation not later than March 7, 2003.

March 4, 2003.

(Sgd.) HILARIO G. DAVIDE, JR.
Chief Justice

(Sgd.) JOSUE N. BELLOSILLO
Associate Justice

(Sgd.) REYNATO S. PUNO
Associate Justice

(Sgd.) JOSE C. VITUG
Associate Justice

(Sgd.) VICENTE V. MENDOZA
Associate Justice

(Sgd.) ARTEMIO V. PANGANIBAN
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(Sgd.) LEONARDO A. QUISUMBING
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(on leave)
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Associate Justice

(Sgd.) ROMEO J. CALLEJO, SR.
Associate Justice

(Sgd.) ADOLFO S. AZCUNA
Associate Justice

RULE ON LEGAL SEPARATION

SECTION 1. *Scope.*— This Rule shall govern petitions for legal separation under the Family Code of the Philippines.

The Rules of Court shall apply suppletorily.

SEC. 2. *Petition.*—

(a) *Who may and when to file.*—

- (1) A petition for legal separation may be filed only by the husband or the wife, as the case may be, within five years from the time of the occurrence of any of the following causes:
 - (a) Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;
 - (b) Physical violence or moral pressure to compel the petitioner to change religious or political affiliation;
 - (c) Attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner, to engage in prostitution, or connivance in such corruption or inducement;
 - (d) Final judgment sentencing the respondent to imprisonment of more than six years, even if pardoned;
 - (e) Drug addiction or habitual alcoholism of the respondent;
 - (f) Lesbianism or homosexuality of the respondent;
 - (g) Contracting by the respondent of a subsequent bigamous marriage, whether in or outside the Philippines;
 - (h) Sexual infidelity or perversion of the respondent;
 - (i) Attempt on the life of petitioner by the respondent; or
 - (j) Abandonment of petitioner by respondent without justifiable cause for more than one year.

(b) *Contents and form.*— The petition for legal separation shall:

- (1) Allege the complete facts constituting the cause of action.
- (2) State the names and ages of the common children of the parties, specify the regime governing their property relations, the properties involved, and creditors, if any.

If there is no adequate provision in a written agreement between the parties, the petitioner may apply for a provisional order for spousal support, custody and support of common children, visitation rights, administration of community or conjugal property, and other similar matters requiring urgent action.

- (3) Be verified and accompanied by a certification against forum shopping. The verification and certification must be personally signed by the petitioner. No petition may be filed solely by counsel or through an attorney-in-fact.

If the petitioner is in a foreign country, the verification and certification against forum

shopping shall be authenticated by the duly authorized officer of the Philippine embassy or legation, consul general, consul or vice-consul or consular agent in said country.

- (4) Be filed in six copies. The petitioner shall, within five (5) days from such filing, furnish a copy of the petition to the City or Provincial Prosecutor and the creditors, if any, and submit to the court proof of such service within the same period.

Failure to comply with the preceding requirements may be a ground for immediate dismissal of the petition.

- (c) *Venue.*— The petition shall be filed in the Family Court of the province or city where the petitioner or the respondent has been residing for at least six (6) months prior to the date of filing or in the case of a non-resident respondent, where he may be found in the Philippines, at the election of the petitioner.

SEC. 3. *Summons.*— The service of summons shall be governed by Rule 14 of the Rules of Court and by the following rules:

- (a) Where the respondent cannot be located at his given address or his whereabouts are unknown and cannot be ascertained by diligent inquiry, service of summons may, by leave of court, be effected upon him by publication once a week for two consecutive weeks in a newspaper of general circulation in the Philippines and in such place as the court may order.

In addition, a copy of the summons shall be served on respondent at his last known address by registered mail or by any other means the court may deem sufficient.

- (b) The summons to be published shall be contained in an order of the court with the following data:
- (1) Title of the case;
 - (2) Docket number;
 - (3) Nature of the petition;
 - (4) Principal grounds of the petition and the reliefs prayed for; and
 - (5) A directive for respondent to answer within thirty (30) days from the last issue of publication.

SEC. 4. *Motion to Dismiss.*— No motion to dismiss the petition shall be allowed except on the ground of lack of jurisdiction over the subject matter or over the parties; *Provided*, however, that any other ground that might warrant a dismissal of the case may be raised as an affirmative defense in an answer.

SEC. 5. *Answer.*—

- (a) The respondent shall file his answer within fifteen (15) days from receipt of summons, or within thirty (30) days from the last issue of publication in case of service of summons by publication. The answer must be verified by respondent himself and not by counsel or attorney-in-fact.
- (b) If the respondent fails to file an answer, the court shall not declare him in default.
- (c) Where no answer is filed, or if the answer does not tender an issue, the court shall order the public prosecutor to investigate whether collusion exists between the parties.

SEC. 6. *Investigation Report of Public Prosecutor.*—

- (a) Within one month after receipt of the court order mentioned in paragraph (c) of the preceding section, the public prosecutor shall submit a report to the court on whether the parties are in collusion and serve copies on the parties and their respective counsels, if any.
- (b) If the public prosecutor finds that collusion exists, he shall state the basis thereof in his report. The parties shall file their respective comments on the finding of collusion within ten (10) days from receipt of copy of the report. The court shall set the report for hearing and if convinced that parties are in collusion, it shall dismiss the petition.
- (c) If the public prosecutor reports that no collusion exists, the court shall set the case for pre-trial. It shall be the duty of the public prosecutor to appear for the State at the pre-trial.

SEC. 7. *Social Worker.*— The court may require a social worker to conduct a case study and to submit the corresponding report at least three (3) days before the pre-trial. The court may also require a case study at any stage of the case whenever necessary.

SEC. 8. *Pre-trial.*—

- (a) *Pre-trial mandatory.*— A pre-trial is mandatory. On motion or *motu proprio*, the court shall set the pre-trial after the last pleading has been served and filed, or upon receipt of the report of the public prosecutor that no collusion exists between the parties on a date not earlier than six (6) months from date of the filing of the petition.
- (b) *Notice of Pre-trial.*—
 - (1) The notice of pre-trial shall contain:
 - (a) The date of pre-trial conference; and
 - (b) An order directing the parties to file and serve their respective pre-trial briefs in such manner as shall ensure the receipt thereof by the adverse party at least three (3) days before the date of pre-trial.
 - (2) The notice shall be served separately on the parties and their respective counsels as well as on the public prosecutor. It shall be their duty to appear personally at the pre-trial.
 - (3) Notice of pre-trial shall be sent to the respondent even if he fails to file an answer. In case of summons by publication and the respondent failed to file his answer, notice of pre-trial shall be sent to respondent at his last known address.

SEC. 9. *Contents of pre-trial brief.*— The pre-trial brief shall contain the following:

- (1) A statement of the willingness of the parties to enter into agreements as may be allowed by law, indicating the desired terms thereof;
- (2) A concise statement of their respective claims together with the applicable laws and authorities;
- (3) Admitted facts and proposed stipulations of facts, as well as the disputed factual and legal issues;
- (4) All the evidence to be presented, including expert opinion, if any, briefly stating or describing the nature and purpose thereof;

- (5) The number and names of the witnesses and their respective affidavits; and
- (6) Such other matters as the court may require.

Failure to file the pre-trial brief or to comply with its required contents shall have the same effect as failure to appear at the pre-trial under the succeeding section.

SEC. 10. *Effect of failure to appear at the pre-trial.*—

- (1) If the petitioner fails to appear personally, the case shall be dismissed unless his counsel or a duly authorized representative appears in court and proves a valid excuse for the non-appearance of the petitioner.
- (2) If the respondent filed his answer but fails to appear, the court shall proceed with the pre-trial and require the public prosecutor to investigate the non-appearance of the respondent and submit within fifteen (15) days a report to the court stating whether his non-appearance is due to any collusion between the parties. If there is no collusion, the court shall require the public prosecutor to intervene for the State during the trial on the merits to prevent suppression or fabrication of evidence.

SEC. 11. *Pre-trial conference.*— At the pre-trial conference, the court may refer the issues to a mediator who shall assist the parties in reaching an agreement on matters not prohibited by law.

The mediator shall render a report within one month from referral which, for good reasons, the court may extend for a period not exceeding one month.

In case mediation is not availed of or where it fails, the court shall proceed with the pre-trial conference, on which occasion it shall consider the advisability of receiving expert testimony and such other matters as may aid in the prompt disposition of the petition.

SEC. 12. *Pre-trial order.*—

- (a) The proceedings in the pre-trial shall be recorded. Upon termination of the pre-trial, the court shall issue a pre-trial order which shall recite in detail the matters taken up in the conference, the action taken thereon, the amendments allowed on the pleadings, and, except as to the ground of legal separation, the agreements or admissions made by the parties on any of the matters considered, including any provisional order that may be necessary or agreed upon by the parties.
- (b) Should the action proceed to trial, the order shall contain a recital of the following:
 - (1) Facts undisputed, admitted, and those which need not be proved subject to Section 13 of this Rule;
 - (2) Factual and legal issues to be litigated;
 - (3) Evidence, including objects and documents, that have been marked and will be presented;
 - (4) Names of witnesses who will be presented and their testimonies in the form of affidavits; and
 - (5) Schedule of the presentation of evidence.

The pre-trial order shall also contain a directive to the public prosecutor to appear for the State and take steps to prevent collusion between the parties at any stage of the proceedings and fabrication or suppression of evidence during the trial on the merits.

- (c) The parties shall not be allowed to raise issues or present witnesses and evidence other than those stated in the pre-trial order. The order shall control the trial of the case unless modified by the court to prevent manifest injustice.
- (d) The parties shall have five (5) days from receipt of the pre-trial order to propose corrections or modifications.

SEC. 13. *Prohibited compromise.*— The court shall not allow compromise on prohibited matters, such as the following:

- (1) The civil status of persons;
- (2) The validity of a marriage or of a legal separation;
- (3) Any ground for legal separation;
- (4) Future support;
- (5) The jurisdiction of courts; and
- (6) Future legitime.

SEC. 14. *Trial.*—

- (a) The presiding judge shall personally conduct the trial of the case. No delegation of the reception of evidence to a commissioner shall be allowed except as to matters involving property relations of the spouses.
- (b) The grounds for legal separation must be proved. No judgment on the pleadings, summary judgment, or confession of judgment shall be allowed.
- (c) The court may order the exclusion from the courtroom of all persons, including members of the press, who do not have a direct interest in the case. Such an order may be made if the court determines on the record that requiring a party to testify in open court would not enhance the ascertainment of truth; would cause to the party psychological harm or inability to effectively communicate due to embarrassment, fear, or timidity; would violate the party's right to privacy; or would be offensive to decency or public morals.
- (d) No copy shall be taken nor any examination or perusal of the records of the case or parts thereof be made by any person other than a party or counsel of a party, except by order of the court.

SEC. 15. *Memoranda.*— The court may require the parties and the public prosecutor to file their respective memoranda in support of their claims within fifteen (15) days from the date the trial is terminated. No other pleadings or papers may be submitted without leave of court. After the lapse of the period herein provided, the case will be considered submitted for decision, with or without the memoranda.

SEC. 16. *Decision.*—

- (a) The court shall deny the petition on any of the following grounds:
 - (1) The aggrieved party has condoned the offense or act complained of or has consented to the commission of the offense or act complained of;
 - (2) There is connivance in the commission of the offense or act constituting the ground for legal separation;

- (3) Both parties have given ground for legal separation;
 - (4) There is collusion between the parties to obtain the decree of legal separation; or
 - (5) The action is barred by prescription.
- (b) If the court renders a decision granting the petition, it shall declare therein that the Decree of Legal Separation shall be issued by the court only after full compliance with liquidation under the Family Code.

However, in the absence of any property of the parties, the court shall forthwith issue a Decree of Legal Separation which shall be registered in the Civil Registry where the marriage was recorded and in the Civil Registry where the Family Court granting the legal separation is located.

- (c) The decision shall likewise declare that:
- (1) The spouses are entitled to live separately from each other, but the marriage bond is not severed;
 - (2) The obligation of mutual support between the spouses ceases; and
 - (3) The offending spouse is disqualified from inheriting from the innocent spouse by intestate succession, and provisions in favor of the offending spouse made in the will of the innocent spouse are revoked by operation of law.
- (d) The parties, including the Solicitor General and the public prosecutor, shall be served with copies of the decision personally or by registered mail. If the respondent summoned by publication failed to appear in the action, the dispositive part of the decision shall also be published once in a newspaper of general circulation.

SEC. 17. *Appeal.* –

- (a) *Pre-condition.* – No appeal from the decision shall be allowed unless the appellant has filed a motion for reconsideration or new trial within fifteen (15) days from notice of judgment.
- (b) *Notice of Appeal.* – An aggrieved party or the Solicitor General may appeal from the decision by filing a Notice of Appeal within fifteen (15) days from notice of denial of the motion for reconsideration or new trial. The appellant shall serve a copy of the notice of appeal upon the adverse parties.

SEC. 18. *Liquidation, partition and distribution, custody, and support of minor children.* – Upon entry of the judgment granting the petition, or, in case of appeal, upon receipt of the entry of judgment of the appellate court granting the petition, the Family Court, on motion of either party, shall proceed with the liquidation, partition and distribution of the properties of the spouses, including custody and support of common children, under the Family Code unless such matters had been adjudicated in previous judicial proceedings.

SEC. 19. *Issuance of Decree of Legal Separation.* –

- (a) The court shall issue the Decree of Legal Separation after:
- (1) Registration of the entry of judgment granting the petition for legal separation in the Civil Registry where the marriage was celebrated and in the Civil Registry where the Family Court is located; and

(2) Registration of the approved partition and distribution of the properties of the spouses, in the proper Register of Deeds where the real properties are located.

(b) The court shall quote in the Decree the dispositive portion of the judgment entered and attach to the Decree the approved deed of partition.

SEC. 20. *Registration and publication of the Decree of Legal Separation; decree as best evidence.*—

(a) *Registration of decree.*— The prevailing party shall cause the registration of the Decree in the Civil Registry where the marriage was registered, in the Civil Registry of the place where the Family Court is situated, and in the National Census and Statistics Office. He shall report to the court compliance with this requirement within thirty (30) days from receipt of the copy of the Decree.

(b) *Publication of decree.*— In case service of summons was made by publication, the parties shall cause the publication of the Decree once in a newspaper of general circulation.

(c) *Best evidence.*— The registered Decree shall be the best evidence to prove the legal separation of the parties and shall serve as notice to third persons concerning the properties of petitioner and respondent.

SEC. 21. *Effect of death of a party; duty of the Family Court or Appellate Court.*—

(a) In case a party dies at any stage of the proceedings before the entry of judgment, the court shall order the case closed and terminated without prejudice to the settlement of estate in proper proceedings in the regular courts.

(b) If the party dies after the entry of judgment, the same shall be binding upon the parties and their successors in interest in the settlement of the estate in the regular courts.

SEC. 22. *Petition for revocation of donations.*—

(a) Within five (5) years from the date the decision granting the petition for legal separation has become final, the innocent spouse may file a petition under oath in the same proceeding for legal separation to revoke the donations in favor of the offending spouse.

(b) The revocation of the donations shall be recorded in the Register of Deeds in the places where the properties are located.

(c) Alienations, liens, and encumbrances registered in good faith before the recording of the petition for revocation in the registries of property shall be respected.

(d) After the issuance of the Decree of Legal Separation, the innocent spouse may revoke the designation of the offending spouse as a beneficiary in any insurance policy even if such designation be stipulated as irrevocable. The revocation or change shall take effect upon written notification thereof to the insurer.

SEC. 23. *Decree of Reconciliation.*—

(a) If the spouses had reconciled, a joint manifestation under oath, duly signed by the spouses, may be filed in the same proceeding for legal separation.

(b) If the reconciliation occurred while the proceeding for legal separation is pending, the court shall immediately issue an order terminating the proceeding.

- (c) If the reconciliation occurred after the rendition of the judgment granting the petition for legal separation but before the issuance of the Decree, the spouses shall express in their manifestation whether or not they agree to revive the former regime of their property relations or choose a new regime.

The court shall immediately issue a Decree of Reconciliation declaring that the legal separation proceeding is set aside and specifying the regime of property relations under which the spouses shall be covered.

- (d) If the spouses reconciled after the issuance of the Decree, the court, upon proper motion, shall issue a decree of reconciliation declaring therein that the Decree is set aside but the separation of property and any forfeiture of the share of the guilty spouse already effected subsists, unless the spouses have agreed to revive their former regime of property relations or adopt a new regime.
- (e) In case of paragraphs (b), (c), and (d), if the reconciled spouses choose to adopt a regime of property relations different from that which they had prior to the filing of the petition for legal separation, the spouses shall comply with Section 24 hereof.
- (f) The decree of reconciliation shall be recorded in the Civil Registries where the marriage and the Decree had been registered.

SEC. 24. *Revival of property regime or adoption of another—*

- (a) In case of reconciliation under Section 23, paragraph (c) above, the parties shall file a verified motion for revival of regime of property relations or the adoption of another regime of property relations in the same proceeding for legal separation attaching to said motion their agreement for the approval of the court.
- (b) The agreement which shall be verified shall specify the following:
- (1) The properties to be contributed to the restored or new regime;
 - (2) Those to be retained as separate properties of each spouse; and
 - (3) The names of all their known creditors, their addresses, and the amounts owing to each.
- (c) The creditors shall be furnished with copies of the motion and the agreement.
- (d) The court shall require the spouses to cause the publication of their verified motion for two consecutive weeks in a newspaper of general circulation.
- (e) After due hearing, and the court decides to grant the motion, it shall issue an order directing the parties to record the order in the proper registries of property within thirty days from receipt of a copy of the order and submit proof of compliance within the same period.

SEC. 25. *Effectivity—* This Rule shall take effect on March 15, 2003 following its publication in a newspaper of general circulation not later than March 7, 2003.



Republic of the Philippines
Supreme Court
Manila

EN BANC

A. M. No. 02-11-12-SC

RE: PROPOSED RULE ON PROVISIONAL ORDERS

RESOLUTION

Acting on the letter of the Chairman of the Committee on Revision of the Rules of Court submitting for this Court's consideration and approval the Proposed Rule on Provisional Orders, the Court Resolved to **APPROVE** the same.

The Rule shall take effect on March 15, 2003 following its publication in a newspaper of general circulation not later than March 7, 2003.

March 4, 2003.

(Sgd.) HILARIO G. DAVIDE, JR.
Chief Justice

(Sgd.) JOSUE N. BELLOSILLO
Associate Justice

(Sgd.) REYNATO S. PUNO
Associate Justice

(Sgd.) JOSE C. VITUG
Associate Justice

(Sgd.) VICENTE V. MENDOZA
Associate Justice

(Sgd.) ARTEMIO V. PANGANIBAN
Associate Justice

(Sgd.) LEONARDO A. QUISUMBING
Associate Justice

(on leave)
CONSUELO YÑARES-SANTIAGO
Associate Justice

(Sgd.) ANGELINA SANDOVAL-GUTIERREZ
Associate Justice

(Sgd.) ANTONIO T. CARPIO
Associate Justice

(Sgd.) MA. ALICIA AUSTRIA-MARTINEZ
Associate Justice

(on leave)
RENATO C. CORONA
Associate Justice

(Sgd.) CONCHITA CARPIO-MORALES
Associate Justice

(Sgd.) ROMEO J. CALLEJO, SR.
Associate Justice

(Sgd.) ADOLFO S. AZCUNA
Associate Justice

RULE ON PROVISIONAL ORDERS

SECTION 1. *When Issued.* – Upon receipt of a verified petition for declaration of absolute nullity of void marriage or for annulment of voidable marriage, or for legal separation, and at any time during the proceeding, the court, *motu proprio* or upon application under oath of any of the parties, guardian or designated custodian, may issue provisional orders and protection orders with or without a hearing. These orders may be enforced immediately, with or without a bond, and for such period and under such terms and conditions as the court may deem necessary.

SEC. 2. *Spousal Support.* – In determining support for the spouses, the court may be guided by the following rules:

- (a) In the absence of adequate provisions in a written agreement between the spouses, the spouses may be supported from the properties of the absolute community or the conjugal partnership.
- (b) The court may award support to either spouse in such amount and for such period of time as the court may deem just and reasonable based on their standard of living during the marriage.
- (c) The court may likewise consider the following factors:
 - (1) Whether the spouse seeking support is the custodian of a child whose circumstances make it appropriate for that spouse not to seek outside employment;
 - (2) The time necessary to acquire sufficient education and training to enable the spouse seeking support to find appropriate employment, and that spouse's future earning capacity;
 - (3) The duration of the marriage;
 - (4) The comparative financial resources of the spouses, including their comparative earning abilities in the labor market;
 - (5) The needs and obligations of each spouse;
 - (6) The contribution of each spouse to the marriage, including services rendered in homemaking, child care, education, and career building of the other spouse;
 - (7) The age and health of the spouses;
 - (8) The physical and emotional conditions of the spouses;
 - (9) The ability of the supporting spouse to give support, taking into account that spouse's earning capacity, earned and unearned income, assets, and standard of living; and
 - (10) Any other factor the court may deem just and equitable.
- (d) The Family Court may direct the deduction of the provisional support from the salary of the spouse.

SEC. 3. *Child Support.* – The common children of the spouses shall be supported from the properties of the absolute community or the conjugal partnership.

Subject to the sound discretion of the court, either parent or both may be ordered to give an amount necessary for the support, maintenance, and education of the child. It shall be in proportion to the resources or means of the giver and to the necessities of the recipient.

In determining the amount of provisional support, the court may likewise consider the following factors:

- (1) The financial resources of the custodial and non-custodial parent and those of the child;
- (2) The physical and emotional health of the child and his or her special needs and aptitudes;
- (3) The standard of living the child has been accustomed to;
- (4) The non-monetary contributions that the parents will make toward the care and well-being of the child.

The Family Court may direct the deduction of the provisional support from the salary of the parent.

SEC. 4. *Child Custody.* – In determining the right party or person to whom the custody of the child of the parties may be awarded pending the petition, the court shall consider the best interests of the child and shall give paramount consideration to the material and moral welfare of the child.

The court may likewise consider the following factors:

- (a) The agreement of the parties;
- (b) The desire and ability of each parent to foster an open and loving relationship between the child and the other parent;
- (c) The child's health, safety, and welfare;
- (d) Any history of child or spousal abuse by the person seeking custody or who has had any filial relationship with the child, including anyone courting the parent;
- (e) The nature and frequency of contact with both parents;
- (f) Habitual use of alcohol or regulated substances;
- (g) Marital misconduct;
- (h) The most suitable physical, emotional, spiritual, psychological and educational environment; and
- (i) The preference of the child, if over seven (7) years of age and of sufficient discernment, unless the parent chosen is unfit.

The court may award provisional custody in the following order of preference:

- (1) To both parents jointly;
- (2) To either parent taking into account all relevant considerations under the foregoing paragraph, especially the choice of the child over seven (7) years of age, unless the parent chosen is unfit;
- (3) To the surviving grandparent, or if there are several of them, to the grandparent chosen by the child over seven (7) years of age and of sufficient discernment, unless the grandparent is unfit or disqualified;
- (4) To the eldest brother or sister over twenty-one (21) years of age, unless he or she is unfit or disqualified;
- (5) To the child's actual custodian over twenty-one (21) years of age, unless unfit or disqualified; or

- (6) To any other person deemed by the court suitable to provide proper care and guidance for the child.

The custodian temporarily designated by the court shall give the court and the parents five (5) days notice of any plan to change the residence of the child or take him out of his residence for more than three (3) days provided it does not prejudice the visitation rights of the parents.

SEC. 5. *Visitation Rights.* – Appropriate visitation rights shall be provided to the parent who is not awarded provisional custody unless found unfit or disqualified by the court.

SEC. 6. *Hold Departure Order.* – Pending resolution of the petition, no child of the parties shall be brought out of the country without prior order from the court.

The court, *motu proprio* or upon application under oath, may issue *ex parte* a hold departure order, addressed to the Bureau of Immigration and Deportation, directing it not to allow the departure of the child from the Philippines without the permission of the court.

The Family Court issuing the hold departure order shall furnish the Department of Foreign Affairs and the Bureau of Immigration and Deportation of the Department of Justice a copy of the hold departure order issued within twenty-four (24) hours from the time of its issuance and through the fastest available means of transmittal.

The hold departure order shall contain the following information:

- (a) The complete name (including the middle name), the date and place of birth, and the place of last residence of the person against whom a hold departure order has been issued or whose departure from the country has been enjoined;
- (b) The complete title and docket number of the case in which the hold departure was issued;
- (c) The specific nature of the case; and
- (d) The date of the hold departure order.

If available, a recent photograph of the person against whom a hold departure order has been issued or whose departure from the country has been enjoined should also be included.

The court may recall the order, *motu proprio* or upon verified motion of any of the parties after summary hearing, subject to such terms and conditions as may be necessary for the best interests of the child.

SEC. 7. *Order of Protection.* – The court may issue an Order of Protection requiring any person:

- (a) To stay away from the home, school, business, or place of employment of the child, other parent or any other party, and to stay away from any other specific place designated by the court;
- (b) To refrain from harassing, intimidating, or threatening such child or the other parent or any person to whom custody of the child is awarded;
- (c) To refrain from acts of commission or omission that create an unreasonable risk to the health, safety, or welfare of the child;
- (d) To permit a parent, or a person entitled to visitation by a court order or a separation agreement, to visit the child at stated periods;
- (e) To permit a designated party to enter the residence during a specified period of time in order

to take personal belongings not contested in a proceeding pending with the Family Court;

(f) To comply with such other orders as are necessary for the protection of the child.

SEC. 8. Administration of Common Property.— If a spouse without just cause abandons the other or fails to comply with his or her obligations to the family, the court may, upon application of the aggrieved party under oath, issue a provisional order appointing the applicant or a third person as receiver or sole administrator of the common property subject to such precautionary conditions it may impose.

The receiver or administrator may not dispose of or encumber any common property or specific separate property of either spouse without prior authority of the court.

The provisional order issued by the court shall be registered in the proper Register of Deeds and annotated in all titles of properties subject of the receivership or administration.

SEC. 9. Effectivity.— This Rule shall take effect on March 15, 2003 following its publication in a newspaper of general circulation not later than March 7, 2003.

**COMMITTEE ON REVISION OF THE RULES OF COURT
(Family Courts)**

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ASST. SECRETARY

LIDA A. PILAPIL

3rd Floor of the Supreme Court Building
Taft Avenue, Manila

PRESIDING JUDGE

2003 Upcoming PHILJA Events

<i>Date</i>	<i>Seminars / Activities</i>	<i>Venue</i>
April 22-25	Regional Judicial Career Enhancement Program (JCEP) Seminar for Region IV	DAP, Tagaytay City
April 28-29	Screening of Applicants for the Pre-Judicature Program	Cebu City
May 7-9	Convention Seminar of the Sheriffs Confederation of the Philippines (SCOPHIL)	Cebu City
May 15-16 (tentative)	PACE National Convention and Seminar	T B A
May 21-23	Seminar of Court Librarians	Tacloban City
May 19- June 13	6th Pre-Judicature Program	Cebu City

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