

# JUSTICE DELAYED IS JUSTICE DENIED: ENSURING EFFICIENT AND SPEEDY CRIMINAL TRIALS IN THE PHILIPPINES

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## I. INTRODUCTION

The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. The inquiry as to whether or not an accused has been denied such right is not susceptible by precise qualification. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept.

While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.<sup>1</sup>

The proverbial saying “*justice delayed is justice denied*” is often quoted by lawyers not only in the Philippines but also in other countries to demand speedy disposition of criminal cases. The negative repercussion of this saying, however, is that some individuals give premium to speed rather than justice. Some use the saying to justify the pace of the trial that contravenes the notion of fairness. On the other hand, some individuals equate speed with undue haste that offends the due process rights of accused persons. One thing is for sure; the word “*speedy*” should never be divorced from the word justice. For speedy justice means that justice must be rendered efficiently.

This paper will survey the different mechanisms in place to ensure that justice is efficiently rendered in this country and in case of failure to do so, the different safeguard mechanisms to address the effects of the violation of a party’s right to have speedy justice.

## II. CONSTITUTIONAL BASIS

The 1987 Philippine Constitution mandated that all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.<sup>2</sup> In criminal cases, the Constitution guarantees a speedy, impartial and public trial in favor of the accused.<sup>3</sup> These constitutional mandates have existed even during the 1935<sup>4</sup> and 1973<sup>5</sup> Constitutions. This mandate

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<sup>1</sup> *Mari v. Gonzales*, GR No. 187728, September 12, 2011 citing *Tan v. People*, GR. No. 173637, April 21, 2009.

<sup>2</sup> Article III, Section 16.

<sup>3</sup> Article III, Section 14 (2).

<sup>4</sup> Article III, Section 17. “In all criminal prosecutions the accused shall be presumed to be innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, **to have a speedy and public trial**, to meet the witnesses face to face, and to have compulsory process to secure the witnesses in his behalf.” [Emphasis Supplied]

<sup>5</sup> Article IV, Section 16. “All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.”

ensures that parties, particularly the accused in criminal prosecutions, are protected from unnecessary delays. In order to explain the concept of the right of speedy trial, the Supreme Court in *People of the Philippines v. Anonas*,<sup>6</sup> briefly surveyed different cases involving the right to a speedy trial, thus:

The earliest rulings of the Court on speedy trial were rendered in *Conde v. Judge of First Instance, Conde v. Rivera, et al.*, and *People v. Castañeda*. These cases held that accused persons are guaranteed a speedy trial by the Bill of Rights and that such right is denied when an accused person, through the vacillation and procrastination of prosecuting officers, is forced to wait many months for trial. Specifically in *Castañeda*, the Court called on courts to be the last to set an example of delay and oppression in the administration of justice and it is the moral and legal obligation of the courts to see to it that the criminal proceedings against the accused come to an end and that they be immediately discharged from the custody of the law.

In *Angcangco, Jr. v. Ombudsman*, the Court found the delay of six years by the Ombudsman in resolving the criminal complaints to be violative of the constitutionally guaranteed right to a speedy disposition of cases. Similarly, in *Roque v. Office of the Ombudsman*, the Court ruled that the delay of almost six years disregarded the Ombudsman's duty to act promptly on complaints before him. In *Cervantes v. Sandiganbayan*, it was held that the Sandiganbayan gravely abused its discretion in not quashing the Information filed six years after the initiatory complaint, thereby depriving petitioner of his right to a speedy disposition of the case. [Citations omitted]

### III. STATUTORY MECHANISMS

In order to give flesh to the constitutional mandate, Congress has enacted laws to ensure that cases are heard swiftly and efficiently. The premiere law that embodies the said Constitutional mandate is the Speedy Trial Act. Congress also enacted laws to act as safeguards to ensure that breaches in the mandate of the Speedy Trial Act will not defeat the rights of the accused. Some of these laws are the Recognizance Law and the Good Conduct Time Allowance Law.

#### A. Speedy Trial Act

On February 12, 1998, Congress passed Republic Act No. 8493 or the Speedy Trial Act of 1998. In turn, the Supreme Court promulgated SC Circular No. 38-98 dated September 15, 1998 to implement the law. One of the most important provisions of the law is that it provides for specific time limits for every stage of the criminal case. The law expressly provides that thirty (30) days from the date the court acquires jurisdiction over the person of the accused, both arraignment and pre-trial must already be conducted.<sup>7</sup> Further, the law provides that the entire trial period should not exceed 180 days. Lastly, the law demands that trial courts set the case for continuous trial on a weekly or other short-term trial calendar at the earliest possible time so as to ensure speedy trial.<sup>8</sup>

While the law specifically mandates reduction or the removal of delay in the conduct of criminal cases, it also acknowledges that not all forms of delay are abhorrent and unacceptable. The law recognizes that there are reasonable and unexpected delays that should not be included in computation of the 180 day limit. These excusable delays are:

- (a) Any period of delay resulting from other proceedings concerning the accused, including but not limited to the following:
  - (1) delay resulting from an examination of the accused, and hearing on his/her mental competency, or physical incapacity;
  - (2) delay resulting from trials with respect to charges against the accused;
  - (3) delay resulting from interlocutory appeals;

<sup>6</sup>GR No. 156847, January 31, 2007.

<sup>7</sup>Section 7, RA 8493.

<sup>8</sup>Section 6, *ibid.*

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- (4) delay resulting from hearings on pre-trial motions: Provided, that the delay does not exceed thirty (30) days;
  - (5) delay resulting from orders of inhibition, or proceedings relating to change of venue of cases or transfer from other courts;
  - (6) delay resulting from a finding of the existence of a valid prejudicial question; and
  - (7) delay reasonably attributable to any period, not to exceed thirty (30) days, during which any proceeding concerning the accused is actually under advisement.
- (b) Any period of delay resulting from the absence or unavailability of the accused or an essential witness.
- (c) Any period of delay resulting from the fact that the accused is mentally incompetent or physically unable to stand trial.
- (d) If the information is dismissed upon motion of the prosecution and thereafter a charge is filed against the accused for the same offense, or any offense required to be joined with that offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.
- (e) A reasonable period of delay when the accused is joined for trial with a co-accused over whom the court has not acquired jurisdiction, or as to whom the time for trial has not run and no motion for severance has been granted.
- (f) Any period of delay resulting from a continuance granted by any justice or judge *motu proprio* or on motion of the accused or his/her counsel or at the request of the public prosecutor, if the justice or judge granted such continuance on the basis of his/her findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial. No such period of delay resulting from a continuance granted by the court in accordance with this subparagraph shall be excludable under this section unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the accused in a speedy trial.<sup>9</sup>

The inclusion of these “reasonable” delays in the law is a recognition that the criminal trial system must not only be fair to the accused but also to the private complainant and the State. A review of the above exceptions will reveal that the delays that are excluded are those delays that were caused by the accused himself. Obviously, the accused cannot benefit from his wrong doings — *Commodum ex injuriasua non habere debet*.<sup>10</sup>

## **B. The Recognizance Law**

A review of different criminal justice systems in the world would reveal that all systems have their different misgivings and errors. This is a recognition that no justice system is error-free. In the Philippines, despite the constitutional mandate and statutory limits, individuals still experience delays in the hearing and disposition of their cases. The morbid effects of delay are very evident in criminal cases. In criminal cases, every moment a case is postponed whether for a legitimate reason or not, means that an accused will be detained a moment more in crowded holding jails. In order to strengthen the constitutional mandate, both Congress and the Supreme Court have instituted certain mechanisms in order to give life to the rights of the accused.

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<sup>9</sup>Section 10, *ibid.* Also see: Sec. 9 of SC Circular No 38-98 and Section 3, Rule 119 of the Revised Rules of Criminal Procedure.

<sup>10</sup>“No person ought to derive any advantage of his own wrong”. Cited in *Communication Materials and Design, Inc. v. Court of Appeals*, GR No. 102223, August 22, 1996.

The Supreme Court last March 18, 2014, promulgated the A.M. No. 12-11-2-SC or the Guideline for the Decongestion of Holding Jails by enforcing the rights of the accused to bail and to speedy trial. The guidelines reiterate the time limits set forth by the Speedy Trial Act of 1998. The guidelines, however, took a step farther from the Speedy Trial Act by expressly declaring that in case of failure to comply with the time limits would lead to the dismissal of the case.<sup>11</sup> By this express provision of the guidelines, there would be a form of compulsion on the part of all parties concerned to comply with all the time limits set by law lest the criminal case will be dismissed.

Also, the guidelines also recognize that reasonable delays would eventually lead to the accused serving the minimum imposable penalty of the offense charged. For this purpose, the guidelines provide the following repercussions:

The accused who has been detained for a period at least equal to the minimum of the penalty for the offense charged against him shall be ordered released, *motu proprio* or on motion and after notice and hearing, on his own recognizance without prejudice to the continuation of the proceedings against him.<sup>12</sup>

On the other hand, in case the accused has served the maximum imposable penalty of the offense charged, the Revised Rules of Criminal Procedure provide that the accused shall be released immediately, without prejudice to the continuation of the trial or the proceedings on appeal.<sup>13</sup>

With these safeguards in place, the accused has a consolation. Despite the delay in the hearing of their cases, at least the time for preventive imprisonment is counted as part of their eventual service of sentence. Though nothing beats a swift procedure, this remedy would do until a more permanent solution is implemented.

For its part, Congress recognizes the fact that poverty in the Philippines has prevented the accused to exercise his right to bail. The fact of delay exacerbates the distinction between the haves and the have-nots. While the rich can enjoy temporary liberty and the fact of delay does not physically hinder them to perform normal activities, poverty stricken individuals feel the wrath of delay on a daily basis. Hence, in order to uplift the impoverished accused and to entitle him to secure temporary liberty, Congress passed Republic Act No. 10389 or the Recognizance Law of 2012. The law institutionalizes the practice of recognizance. Recognizance is defined as a mode of securing the release of any person in custody or detention for the commission of an offense who is unable to post bail due to abject poverty.<sup>14</sup> Recognizance then allows the accused to secure temporary liberty, thereby limiting the effects of delay in his case and to his liberty.

### C. Good Conduct Time Allowance Law

With the wave of transformation that enveloped the criminal justice system all over the world, the focus now is on reformation rather than being punitive. As such, Congress amended several provisions of the Revised Penal Code covering good conduct time allowances. The law, Republic Act No. 10592,<sup>15</sup> increased the number of days that are credited to the accused for good behavior and for serving as mentors, teachers or students. Thus, any delay experienced by the accused can be transformed into something productive, either in the form of further reduction of the service of sentence or the personal development of the accused.

## IV. JUDICIAL MECHANISMS

Aside from the much-needed legislation to ensure speedy trial, the Supreme Court has also adopted

<sup>11</sup> Section 9, A.M. No. 12-11-2-SC.

<sup>12</sup> Section 5, A.M. No. 12-11-2-SC. See also Rule 114, Section 16, Revised Rules of Criminal Procedure and Section 5 (b), Republic Act 10389.

<sup>13</sup> Rule 114, Section 16 Revised Rules of Criminal Procedure.

<sup>14</sup> Section 3, RA 10389.

<sup>15</sup> An Act amending Articles 29, 94, 97, 98 and 99 of Act No. 3815, as Amended, otherwise known as the Revised Penal Code.

certain rules to further expedite trial or dispense of trial. These include the revolutionary Judicial Affidavit Rule and the Rule on Small Claims, the Guidelines for Decongesting Holding Jails by enforcing the rights of accused persons to bail and speedy trial, the experimental Guidelines for Litigation in Quezon City trial courts, the mandatory pre-trial proceedings, mediation, conciliation and arbitration proceedings.

#### **A. The Judicial Affidavit Rule**

On September 4, 2012, the Supreme Court issued Administrative Matter No. 12-8-8-SC or the Judicial Affidavit Rule (JAR). The rule covers all actions, proceedings, and incidents requiring the reception of evidence before: (1) The Metropolitan Trial Courts, the Municipal Trial Courts in Cities, the Municipal Trial Courts, the Municipal Circuit Trial Courts, and the Shari' a Circuit Courts but shall not apply to small claims cases under A.M. 08-8-7-SC; (2) The Regional Trial Courts and the Shari' a District Courts; (3) The Sandiganbayan, the Court of Tax Appeals, the Court of Appeals, and the Shari' a Appellate Courts; (4) The investigating officers and bodies authorized by the Supreme Court to receive evidence, including the Integrated Bar of the Philippine (IBP); and (5) The special courts and quasi-judicial bodies, whose rules of procedure are subject to disapproval of the Supreme Court, insofar as their existing rules of procedure contravene the provisions of the JAR.<sup>16</sup>

The main feature of the JAR is the submission of judicial affidavits in lieu of direct testimonies at least 5 days before pre-trial.<sup>17</sup> The result of the JAR is that it decreased the number of trial dates by two-thirds (2/3). As explained by one of the proponents of the JAR, Supreme Court Associate Justice Roberto A. Abad (ret), practice dictates that direct examination of a witness usually takes 2/3 of the total time for that witness. The remaining one-third (1/3) is devoted for cross-examination.<sup>18</sup> What the JAR does is to remove the time for direct examination thereby forcing the opposing party to conduct cross-examination. The cross-examining party should also be prepared since the judicial affidavits have been made available even before pre-trial. The JAR therefore increases the ability of trial courts to hear more witnesses in a given day.

Also, the JAR abbreviates the proceedings since marking of the evidence to be presented are already done before pre-trial. The JAR provides that the judicial affidavits must include the parties' documentary or object evidence, if any, and marked as Exhibits A, B, C, and so on in the case of the complainant or the plaintiff, and as Exhibits 1, 2, 3, and so on in the case of the respondent or the defendant.<sup>19</sup>

Further, the JAR mandates that a party's formal offer of evidence must generally be done orally.<sup>20</sup> The formal offer of evidence is very important proceeding because any evidence not formally offered will not be considered.<sup>21</sup> As such, it is of usual practice that parties usually opt to submit a written formal offer of evidence. Parties then usually utilize the postal service to send their pleadings. In the Philippines, the postal service is not very reliable, thus, documents sent via the postal service usually arrive after a few weeks. Any comment on the said formal offer will be filed and served also using the postal service. The Court, after receiving the formal offer of evidence and the other party's comment, will then rule on it. This procedure is time consuming. The JAR pushes parties to make oral offers of evidence and for the other party to make prompt oppositions to the offer. From there, the court will decide whether to admit the evidence or not. Thus, the JAR then abbreviates the proceedings by limiting the time for the formal offer of evidence from 2 to 3 months to a matter of minutes.

Lastly, the JAR imposes very strict penalties for non-compliance with the rule or for failure to present the judicial affidavit of the witness on a pre-determined date. Thus:

- (a) A party who fails to submit the required judicial affidavits and exhibits on time shall be

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<sup>16</sup> Section 1, AM No. 12-8-8-SC.

<sup>17</sup> Section 2, *ibid.*

<sup>18</sup> Alviola, A. Forum on Judicial Reform with Justice Abad. September 27, 2012. Retrieved at <<http://salongacenter.org/2012/09/forum-on-judicial-reform-with-justice-abad/>>, August 1, 2014.

<sup>19</sup> Section 2 (a) (2), AM No. 12-8-8-SC.

<sup>20</sup> Section 8, *ibid.*

<sup>21</sup> Section 34, Rule 132 of the Revised Rules on Evidence.

deemed to have waived their submission. The court may, however, allow only once the late submission of the same provided, the delay is for a valid reason, would not unduly prejudice the opposing party, and the defaulting party pays a fine of not less than P1,000.00 nor more than P5,000.00, at the discretion of the court.

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

(c) The court shall not admit as evidence judicial affidavits that do not conform to the content requirements of Section 3 and the attestation requirement of Section 4 above. The court may, however, allow only once the subsequent submission of the compliant replacement affidavits before the hearing or trial provided the delay is for a valid reason and Judicial Affidavit Rule would not unduly prejudice the opposing party and provided further, that public or private counsel responsible for their preparation and submission pays a fine of not less than P1,000.00 nor more than P5,000.00, at the discretion of the court.

In its entirety, the JAR by mandating the submission of the judicial affidavits of all the witnesses and their respective pieces of evidence, forces all parties to lay their cards on the table. This presupposes that parties should be prepared for the rigors of litigation. One of the main reasons for the delay in the proceedings is the fact that some lawyers come to court unprepared. The JAR remedies this problem.

## **B. Rules on Small Claims**

One of the most effective procedural innovations promulgated by the Supreme Court is A.M. No. 08-8-7-SC or the Rules of Procedure for Small Claims Cases.<sup>22</sup> The Rule shall govern the procedure in actions before the Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts for payment of money where the value of the claim does not exceed One Hundred Thousand Pesos (P100,000.00) exclusive of interest and costs.<sup>23</sup> Generally, the Rule shall be applied by first level courts in all actions which are; (a) purely civil in nature where the claim or relief prayed for by the plaintiff is solely for payment or reimbursement of sum of money, and (b) the civil aspect of criminal action, or reserved upon the filing of the criminal action in court, pursuant to Rule of 111 of the Revised Rules of Criminal Procedure. Particularly, the claims or demands may be; (a) For money owned under any of the following: (1) Contract of Lease; (2) Contract of Loan; (3) Contract of Services; (4) Contract of Sale; or (5) Contract of Mortgage; (b) For damages arising from any of the following: (1) Fault or negligence; (2) Quasi-contract; or (3) Contract; and (c) The enforcement of a *barangay* amicable settlement or an arbitration award involving a money claim covered by this Rule pursuant to Sec. 417 of the Local Government Code of 1991.<sup>24</sup>

The principal provision of the Rule is that it boasts of a same day rendition of judgment. This means that judgment will be rendered the same day as the hearing day.<sup>25</sup> The decision is also final and unappealable. The procedure is conducted informally and the rule prohibits the participation of lawyers.

The purpose of the rule is to enhance the power and duty of the judiciary as agent of change by unclogging the heavy court dockets in order to efficiently address the clamor for more accessible, much swifter and less expensive delivery of justice to the less privileged members of the society.<sup>26</sup> Consistent with the purpose of the rules, the pilot testing for the rule commenced and the initial figures are promising. After pilot testing, more than 1/3 or 37% or 1,460 of the cases were settled amicably and a

<sup>22</sup> Dated September 9, 2008.

<sup>23</sup> Section 1, AM No. 08-8-7-SC.

<sup>24</sup> Section 4, *ibid.*

<sup>25</sup> Section 23, *ibid.*

<sup>26</sup> Chief Justice Reynato S. Puno, Handbook on the Rules of Procedure for Small Claims Cases. Retrieved at <philippines\_handbook\_rule\_of\_law\_procedure\_for\_small\_claims\_cases\_2009>, August 2 2014.

good number of litigants gave the rule a high satisfaction rating particularly due to the informal conduct of the proceedings and the non-participation of lawyers.<sup>27</sup> Until now, the rules on small claims cases remain to be one of the most effective rules that provide speedy justice.

### **C. Guidelines for Litigation in Quezon City Trial Courts**

On February 21, 2012, the Supreme Court promulgated the guidelines for litigation in Quezon City Trial Courts. The precursor of the Judicial Affidavit Rule,<sup>28</sup> the practice guidelines, is an experimental system designed to determine whether the proposed rule would work and if it does, whether the proposed rule can be applied uniformly nationwide.

The practice guidelines call for the strict application of the Rules of Court and further shorten the time limits imposed by the Speedy Trial Act. The strictness of the rule is equally imposed on both parties and the judge. For the parties involved, the following strict measures can be observed: (a) the guidelines declare that defective motions are mere scraps of paper and do not produce any legal effect.<sup>29</sup> These defective motions cannot be cured by subsequent amendment or by claiming that the defective motion substantially complied with the rules; (b) Postponements are prohibited.<sup>30</sup> Judges will not entertain any motion for postponement except by reason of force majeure or Acts of God;<sup>31</sup> and (c) the number of pages of pleadings subsequent to the complaint, answer and reply is limited. This would ensure that the time spent by the judge in reading the records would be equally divided among the cases pending before his *sala*. Without this limitation, parties would tax the judge in reading pleadings that are at times circuitous and repetitive to the prejudice of other equally important cases.

The guidelines also remind the judge that incomplete transcripts of stenographic notes cannot be a valid excuse to interrupt the mandatory period to decide a case.<sup>32</sup> It also guarantees that no second call on the cases shall be made except to those cases that expressed their willingness to proceed to trial.<sup>33</sup>

Lastly, considering the short comings of the postal system, the practice guidelines allow the use of private courier services to file pleadings to the court and serve copies thereof to the other party. The guidelines also introduced the “presumptive notice rule” which provides that motions setting court hearings are deemed received by the recipient if the notice has been mailed at least 20 days from the scheduled hearing, if the recipient is a resident of Metro Manila or at least 30 days if the recipient is outside Metro Manila.<sup>34</sup> Surely, these steps greatly improved the kind of service the judiciary is giving to the people.

### **D. The Guidelines for Decongesting Holding Jails by Enforcing the Rights of Accused Persons to Bail and Speedy Trial**

One of the unsavory effects of case delay, especially in criminal cases is that the holding jails become congested. People will continuously enter the facility but due to the slow and snail-like pace of the trial of their cases, only a few individuals are set free or transferred to the National Penitentiary for the service of their sentences. To prevent jail congestion then, the Supreme Court has issued A.M. No. 12-11-2-SC or the Guidelines for Decongesting Holding Jails by Enforcing the Rights of Accused Persons to Bail and Speedy Trial.

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<sup>27</sup> Court Administrator Jose Midas P. Marquez, Hand Book on the Rules of Procedure for Small Claims Cases. Retrieved at <philippines\_handbook\_rule\_of\_law\_procedure\_for\_small\_claims\_cases\_2009>, August 2, 2014.

<sup>28</sup> The Judicial Affidavit Rule (A.M. No. 12-8-8-SC) cites the success of the Practice Guidelines in compelling the use of judicial affidavits in lieu of direct testimonies, as one of the reasons for the promulgation of the said rule.

<sup>29</sup> Common Provisions, No. 2. Guidelines for Litigation in Quezon City Trial Courts.

<sup>30</sup> Common Provisions, No. 4, *ibid*.

<sup>31</sup> “To constitute a fortuitous event, it must be shown that: a) the cause of the unforeseen and unexpected occurrence or of the failure of the obligor to comply with its obligations was independent of human will; b) it was impossible to foresee the event or, if it could have been foreseen, to avoid it; c) the occurrence rendered it impossible for the obligor to fulfill its obligations in a normal manner; and d) said obligor was free from any participation in the aggravation of the injury or loss”. See *College Assurance Plan v Belfranlt Development, Inc.* G.R. No. 155604, November 22, 2007.

<sup>32</sup> Common Provisions, No. 7, Guidelines for Litigation in Quezon City Trial Courts.

<sup>33</sup> Common Provisions, No. 5, *ibid*.

<sup>34</sup> Common Provisions, No. 3, *ibid*.

The Supreme Court has acknowledged that the manners in which parties are notified are, most of the time, the cause of delay. Several attempts were made to combat this problem like the presumptive notice rule and the use of the private courier service. Another attempt is to use modern technology in combating the problem. The guidelines allow the use of Short Messaging Services (SMS), telephone calls, and electronic mail (e-mail) to notify the parties of scheduled hearings.<sup>35</sup>

The rules provide that during preliminary investigation and inquest proceedings, the public prosecutor is duty bound to get from the complainant and the respondent their respective postal and e-mail addresses as well as their mobile numbers.<sup>36</sup> Also, if a party requests the court for the issuance of a subpoena to secure the attendance of a witness, the requesting party shall inform the court of the witness' postal and email addresses as well as his mobile number.<sup>37</sup>

The guidelines also provided the manner in which notice through the means can be proven in court, thus:

The service of notice of hearing or subpoena at the postal address, e-mail address, or through mobile phone number shall be proved by any of the following:

- (1) an officer's return or affidavit of service if done by personal service, or by registry return card;
- (2) printouts of sent e-mail and the acknowledgment by the recipient;
- (3) printouts of electronic messages transmitted through the court's equipment or device and the acknowledgment by the recipient; or
- (4) reports of phone calls made by the court.<sup>38</sup>

The use of technology in notifying parties to a case is a cost-effective way to provide speedy justice in criminal cases. By using these means, the Supreme Court is exploring the use of unconventional tools to solve conventional problems.

Also, the guidelines provide for a solution to the failure of government expert witnesses to attend scheduled hearings. Since their testimonies consist merely on the correctness of the report that they present, the rule provides that a certified copy of the report of a government medical, chemical, or laboratory expert relating to a criminal case shall be admissible as prima facie evidence of the truth of its contents. The personal appearance in court of a witness who prepared the report shall be unnecessary unless demanded by the accused for the purpose of cross-examination.<sup>39</sup> This rule, therefore, generally dispenses their attendance as a witness for the prosecution, thereby, abbreviating the presentation of the prosecution evidence.

#### **E. Pre-Trial Procedures**

The Rules of Court make it mandatory for all cases to undergo pre-trial proceedings. Pre-trial is an essential device for the speedy disposition of disputes<sup>40</sup> and was hailed as the most important procedural innovation in Anglo-Saxon justice in the nineteenth century.<sup>41</sup> The pre-trial, in criminal cases,<sup>42</sup> requires the parties to discuss the following: (a) plea bargaining; (b) stipulation of facts; (c) marking for identification of evidence of the parties; (d) waiver of objections to admissibility of

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<sup>35</sup> Section 11, Guidelines for Decongesting Holding Jails by Enforcing the Rights of accused persons to bail and speedy trial.

<sup>36</sup> Section 12 (a), *ibid.*

<sup>37</sup> Section 12 (b), *ibid.*

<sup>38</sup> Section 12 (c), *ibid.*

<sup>39</sup> Section 13, *ibid.*

<sup>40</sup> *Tiu v. Middleton*, G. R. No. 134998, July 19, 1999.

<sup>41</sup> *Ibid.*

<sup>42</sup> Section 1, Rule 118, Revised Rules of Criminal Procedure.

evidence; (e) modification of the order of trial if the accused admits the charge but interposes a lawful defense; and such other matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case.<sup>43</sup>

In essence, the pre-trial proceedings force the parties to pinpoint to factual issues that need to be resolved during trial; facts that are irrelevant or not in issue can be subject to stipulations and concessions by both parties. The pre-trial, thus, streamlines the factual issues, thereby cancelling out any irrelevant or uncontested issues that parties may discuss or introduce.

#### **F. Mediation, Conciliation and Arbitration Proceedings**

Aside from promulgating rules that seek to simplify procedure, the Government has been taking active steps to prevent cases from being filed in court. One such move is the institutionalization of the *Karatungang Pambarangay* in Republic Act 7610 or the Local Government Code of 1991.<sup>44</sup> Each *barangay* shall have a *lupon tagapamayapa*, composed of the *punong barangay* as the chairman and ten (10) to twenty (20) members.<sup>45</sup> From this *lupon*, a *pangkat ng tagapagsundo* will be constituted to settle controversies within their respective *barangays*.

The *pangkat ng tagapagsundo* uses a wide array of methods such as arbitration<sup>46</sup> and conciliation<sup>47</sup> proceedings to end the conflict between the parties. Once a compromise has been concluded, such agreement can be enforced either (a) by execution by the *punong barangay* which is quasi-judicial and summary in nature on mere motion of the party entitled thereto; and (b) an action in regular form, which remedy is judicial.<sup>48</sup> This ensures that there is a first line of conflict resolution mechanism existing in the *barangay* level to avoid court action. And generally, non-resort to these modes of settlement before the resort to judicial processes will result to the dismissal of the court action.<sup>49</sup>

Consistent with the thrust of avoiding court litigation, the Supreme Court institutionalized a court-annexed mediation proceeding during pre-trial. The mediation proceedings are usually conducted by the mediators of the Philippine Mediation Center. Mediation is a process of settling disputes with the assistance of an acceptable, impartial and neutral third party called a mediator. The mediator helps parties identify issues and develop proposals to resolve their disputes. Once the parties have arrived at a mutually acceptable arrangement, the agreement becomes the basis for the court's decision on the case.<sup>50</sup> The Supreme Court also introduced the concept of Judicial Dispute Resolution (JDR). JDR is another innovation in the Philippine court system. When court-annexed mediation fails, the case is brought to the judge who then acts as a conciliator, a neutral evaluator and a mediator. The judge will try to mediate the case. If the judge's intervention as a mediator succeeds, the case is concluded with

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<sup>43</sup> On the other hand, in civil cases, Rule 18, Section 2 provides that parties consider the following: (a) the possibility of an amicable settlement or of a submission to alternative modes of dispute resolution; (b) the simplification of the issues; (c) the necessity or desirability of amendments to the pleadings; (d) the possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof; (e) the limitation of the number of witnesses; (f) the advisability or necessity of suspending the proceedings; and (i) such other matters as may aid in the prompt disposition of the action.

<sup>44</sup> Section 408 of RA 7610 provides that the *lupon* of each *barangay* shall have authority to bring together the parties actually residing in the same city or municipality for amicable settlement of all disputes except: (a) Where one party is the government, or any subdivision or instrumentality thereof; (b) Where one party is a public officer or employee, and the dispute relates to the performance of his official functions; (c) Offenses punishable by imprisonment exceeding one (1) year or a fine exceeding Five thousand pesos (P5,000.00); (d) Offenses where there is no private offended party; (e) Where the dispute involves real properties located in different cities or municipalities unless the parties thereto agree to submit their differences to amicable settlement by an appropriate *lupon*; (f) Disputes involving parties who actually reside in *barangays* of different cities or municipalities, except where such *barangay* units adjoin each other and the parties thereto agree to submit their differences to amicable settlement by an appropriate *lupon*; and (g) Such other classes of disputes which the President may determine in the interest of justice or upon the recommendation of the Secretary of Justice.

<sup>45</sup> Section 399, RA 7610

<sup>46</sup> Section 413, *ibid.*

<sup>47</sup> Section 412, *ibid.*

<sup>48</sup> *Miguel v. Montanes*, G.R. No. 191336, January 25, 2012.

<sup>49</sup> The Local government code requires that a certification must first be issued by the *punong barangay* to the effect that mediation and other proceedings have failed to reach a compromise before any result to judicial action.

<sup>50</sup> The Philippine Mediation Center. Retrieved at <<http://www.pmc.org.ph/about-alternative-dispute-resolution.htm>>, August 3, 2014.

a judgment based on a compromise. If the dispute is still unresolved, then the case is referred to another judge for trial. Both parties must now be prepared for litigation.<sup>51</sup> In both instances, the court is taking all the necessary steps to avoid litigation.

Congress, also acknowledging the need to settle disputes outside the judicial sphere passed Republic Act No. 9285 or the Alternative Dispute Resolution Act of 2004. The law encourages and actively promotes the use of Alternative Dispute Resolution (ADR) as an important means to achieve speedy and impartial justice and declog court dockets.<sup>52</sup>

Generally, conflicts that are resolved by arbitration are prevented from going to the court for judicial redress.<sup>53</sup> The only time where the court intervenes is during the confirmation and execution of the awards. All of these modes are a welcome addition to decongest court dockets by providing simpler and more expedient resolution of cases.

## V. OUT OF COURT MECHANISMS

Of course, aside from the simplification of procedures, the court also uses other out-of court solutions to combat delay in the trial of cases. These include the Case Flow Management (CFM) Program together with the subsequent Case Administrator Information System (CAMIS), the *Hustisyeah!* Project and the Enhanced Justice on Wheels (EJOW).

### A. Court Management

While reforms in the procedure are on their way, a correlative reform agenda was instituted in the area of Case Management. Improper case management, improper calendaring of cases and poor tracking of cases contributes to the delay in hearing them. Thus, the Supreme Court instituted the CFM using a Differentiated Case Management Scheme.<sup>54</sup> The scheme warrants the development of a case management plan then following the plan, Tracking Systems were formulated by collapsing time frames for case events into reasonably short periods to shorten case life and prevent or minimize delay. There are 3 tracks: the Fast track, Standard track and Complex track. Simple cases would be assigned to Fast Track to be disposed of in six months or less. Cases that demanded utmost judicial attention were shunted to the Complex Track with a disposal time of two years; and a Standard track was configured to capture cases that were neither simple nor complex, the case life of which would be one year.<sup>55</sup>

An equivalent project is the CAMIS. The CAMIS was a response to two different problems: First, significant time was spent by judges and staff in gathering and entering data to record caseload and case-flow information. Manual counts were required for each report and additional time was spent checking and rechecking the numbers to ensure their accuracy and completeness; and second; staff spent too much time collecting statistical data, processing and tracking hundreds of monthly reports and not enough time analyzing the results and preparing reports for decision-making purposes. Managers and researchers were frustrated with the lack of timely reports and wanted direct access to more detailed, more consistent, and more integrated information from the trial courts.<sup>56</sup> The system was designed to provide Electronic Log of Monthly Reports and Web-Based Capture Data, all designed for better monitoring. However, despite the ambitiousness of these projects, certain facts led to the unreliability of the data produced.

### B. The *Hustisyeah!* Project

The unreliability of the data produced by the CFM and the CAMIS led the Court to approve the

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<sup>51</sup> *Ibid.*

<sup>52</sup> Section 2, RA 9285.

<sup>53</sup> The exception here is found under Section 28 of the law where the court is empowered to provide interim measures of protection.

<sup>54</sup> Elepano, Z. A Presentation on Case Management Reform: The Philippine Experience. (2009) Retrieved July 24, 2014.

<sup>55</sup> *Ibid.*

<sup>56</sup> Velasco, P. Court Administration Management Information System. Retrieved at <[http://jrn21.judiciary.gov.ph/forum\\_icsjr/ICSJR\\_Philippines%20%28P%20Velasco%29.pdf](http://jrn21.judiciary.gov.ph/forum_icsjr/ICSJR_Philippines%20%28P%20Velasco%29.pdf)>, August 3, 2014.

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Hustiyeah! Project on April 15, 2013. The project covers all courts with 500 or more case load. The project is a one-time case inventory project to ensure that the data recovered is reliable. Further, in the course of the inventory certain cases may be recommended for disposal or archival. At the end, each participating plan will craft a case management plan to ensure that all of their cases will be attended. The project also helps these courts by providing extra-legal researchers and lawyers or private couriers to serve notices.

**C. Enhanced Justice on Wheels Project (EJOW)**

Lastly, the EJOW was a solution to the worsening congestion of cases and jails nationwide. However, aside from swiftly resolving cases, the EJOW extended its mandate to include dental and medical missions to places where the court-room buses visit.<sup>57</sup>

**VI. CONCLUSION**

The approach to solve the problem of delay is multi-faceted. It needs the participation of all stakeholders in the system. The judiciary cannot do it alone, certainly. Everyone in the justice system has to do their part. For what is the use of all these rules if at the end, no one is willing to follow them. At the end of the day, everyone benefits from a more efficient system. The hope still remains that the saying “justice delayed is justice denied” will be but an anachronistic nightmare.

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<sup>57</sup> Del Castillo, M. Enhanced Justice on Wheels Program. Retrieved at <<http://www.justpal.org/documents/10179/26157/Mr.%20Mariano%20C.%20Del%20Castillo%20%28Associate%20Justice,%20Supreme%20Court%20of%20Philippines%29,%20Case%20Management%20and%20Information%20Management.pdf>>, August 4, 2014.