

April 13, 2010

EN BANC

A.M. No. 09-6-8-SC

RULES OF PROCEDURE FOR ENVIRONMENTAL CASES

RESOLUTION

Acting on the recommendation of the Chairperson of the Sub-committee on the Rules of Procedure for Environmental Cases submitting for this Court's consideration and approval the proposed Rules of Procedure for Environmental Cases, the Court Resolved to APPROVE the same.

These Rules shall take effect within fifteen (15) days following its publication once in a newspaper of general circulation.

April 13, 2010.

(SGD.) REYNATO S. PUNO
Chief Justice
Supreme Court of the Philippines

(SGD.) ANTONIO T. CARPIO
Associate Justice
Supreme Court of the Philippines

(SGD.) RENATO C. CORONA
Associate Justice
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CONCHITA CARPIO MORALES
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(SGD.) ANTONIO EDUARDO B. NACHURA
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RULES OF PROCEDURE FOR ENVIRONMENTAL CASES

PART I

RULE 1

General Provisions

SECTION 1. *Title.* – These Rules shall be known as "*The Rules of Procedure for Environmental Cases.*"

SECTION 2. *Scope.* – These Rules shall govern the procedure in civil, criminal and special civil actions before the Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts involving enforcement or violations of environmental and other related laws, rules and regulations such as but not limited to the following:

- (a) Act No. 3572, Prohibition Against Cutting of Tindalo, Akli, and Molave Trees;
- (b) P.D. No. 705, Revised Forestry Code;
- (c) P.D. No. 856, Sanitation Code;
- (d) P.D. No. 979, Marine Pollution Decree;
- (e) P.D. No. 1067, Water Code;
- (f) P.D. No. 1151, Philippine Environmental Policy of 1977;
- (g) P.D. No. 1433, Plant Quarantine Law of 1978;
- (h) P.D. No. 1586, Establishing an Environmental Impact Statement System Including Other Environmental Management Related Measures and for Other Purposes;
- (i) R.A. No. 3571, Prohibition Against the Cutting, Destroying or Injuring of Planted or Growing Trees, Flowering Plants and Shrubs or Plants of Scenic Value along Public Roads, in Plazas, Parks, School Premises or in any Other Public Ground;
- (j) R.A. No. 4850, Laguna Lake Development Authority Act;
- (k) R.A. No. 6969, Toxic Substances and Hazardous Waste Act;
- (l) R.A. No. 7076, People's Small-Scale Mining Act;
- (m) R.A. No. 7586, National Integrated Protected Areas System Act including all laws, decrees, orders, proclamations and issuances establishing protected areas;
- (n) R.A. No. 7611, Strategic Environmental Plan for Palawan Act;
- (o) R.A. No. 7942, Philippine Mining Act;
- (p) R.A. No. 8371, Indigenous Peoples Rights Act;
- (q) R.A. No. 8550, Philippine Fisheries Code;
- (r) R.A. No. 8749, Clean Air Act;
- (s) R.A. No. 9003, Ecological Solid Waste Management Act;

- (t) R.A. No. 9072, National Caves and Cave Resource Management Act;
- (u) R.A. No. 9147, Wildlife Conservation and Protection Act;
- (v) R.A. No. 9175, Chainsaw Act;
- (w) R.A. No. 9275, Clean Water Act;
- (x) R.A. No. 9483, Oil Spill Compensation Act of 2007; and
- (y) Provisions in C.A. No. 141, The Public Land Act; R.A. No. 6657, Comprehensive Agrarian Reform Law of 1988; R.A. No. 7160, Local Government Code of 1991; R.A. No. 7161, Tax Laws Incorporated in the Revised Forestry Code and Other Environmental Laws (Amending the NIRC); R.A. No. 7308, Seed Industry Development Act of 1992; R.A. No. 7900, High-Value Crops Development Act; R.A. No. 8048, Coconut Preservation Act; R.A. No. 8435, Agriculture and Fisheries Modernization Act of 1997; R.A. No. 9522, The Philippine Archipelagic Baselines Law; R.A. No. 9593, Renewable Energy Act of 2008; R.A. No. 9637, Philippine Biofuels Act; and other existing laws that relate to the conservation, development, preservation, protection and utilization of the environment and natural resources.

SECTION 3. *Objectives.* – The objectives of these Rules are:

- (a) To protect and advance the constitutional right of the people to a balanced and healthful ecology;
- (b) To provide a simplified, speedy and inexpensive procedure for the enforcement of environmental rights and duties recognized under the Constitution, existing laws, rules and regulations, and international agreements;
- (c) To introduce and adopt innovations and best practices ensuring the effective enforcement of remedies and redress for violation of environmental laws; and
- (d) To enable the courts to monitor and exact compliance with orders and judgments in environmental cases.

SECTION 4. *Definition of Terms.* –

- (a) *By-product or derivatives* means any part taken or substance extracted from wildlife, in raw or in processed form including stuffed animals and herbarium specimens.
- (b) *Consent decree* refers to a judicially-approved settlement between concerned parties based on public interest and public policy to protect and preserve the environment.
- (c) *Continuing mandamus* is a writ issued by a court in an environmental case directing any agency or instrumentality of the government or officer thereof to perform an act or series of acts decreed by final judgment which shall remain effective until judgment is fully satisfied.
- (d) *Environmental Protection Order (EPO)* refers to an order issued by the

court directing or enjoining any person or government agency to perform or desist from performing an act in order to protect, preserve or rehabilitate the environment.

- (e) *Mineral* refers to all naturally occurring inorganic substance in solid, gas, liquid, or any intermediate state excluding energy materials such as coal, petroleum, natural gas, radioactive materials and geothermal energy.
- (f) *Precautionary principle* states that when human activities may lead to threats of serious and irreversible damage to the environment that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that threat.
- (g) *Strategic Lawsuit Against Public Participation (SLAPP)* refers to an action whether civil, criminal or administrative, brought against any person, institution or any government agency or local government unit or its officials and employees, with the intent to harass, vex, exert undue pressure or stifle any legal recourse that such person, institution or government agency has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights.
- (h) *Wildlife* means wild forms and varieties of flora and fauna, in all developmental stages including those which are in captivity or are being bred or propagated.

PART II

Civil Procedure

RULE 2

Pleadings and Parties

SECTION 1. *Pleadings and Motions Allowed.* – The pleadings and motions that may be filed are complaint, answer which may include compulsory counterclaim and cross-claim, motion for intervention, motion for discovery and motion for reconsideration of the judgment.

Motion for postponement, motion for new trial and petition for relief from judgment shall be allowed in highly meritorious cases or to prevent a manifest miscarriage of justice.

SECTION 2. *Prohibited Pleadings or Motions.* – The following pleadings or motions shall not be allowed:

- (a) Motion to dismiss the complaint;
- (b) Motion for a bill of particulars;
- (c) Motion for extension of time to file pleadings, except to file answer, the extension not to exceed fifteen (15) days;
- (d) Motion to declare the defendant in default;
- (e) Reply and rejoinder; and
- (f) Third party complaint.

SECTION 3. *Verified Complaint.* – The verified complaint shall contain the names of the parties, their addresses, the cause of action and the reliefs prayed for.

The plaintiff shall attach to the verified complaint all evidence proving or supporting the cause of action consisting of the affidavits of witnesses, documentary evidence and if possible, object evidence. The affidavits shall be in question and answer form and shall comply with the rules of admissibility of evidence.

The complaint shall state that it is an environmental case and the law involved. The complaint shall also include a certification against forum shopping. If the complaint is not an environmental complaint, the presiding judge shall refer it to the executive judge for re-affle.

SECTION 4. *Who May File.* – Any real party in interest, including the government and juridical entities authorized by law, may file a civil action involving the enforcement or violation of any environmental law.

SECTION 5. *Citizen Suit.* – Any Filipino citizen in representation of others, including minors or generations yet unborn, may file an action to enforce rights or obligations under environmental laws. Upon the filing of a citizen suit, the court shall issue an order which shall contain a brief description of the cause of action and the reliefs prayed for, requiring all interested parties to manifest their interest to intervene in the case within fifteen (15) days from notice thereof. The plaintiff may publish the order once in a newspaper of a general circulation in the Philippines or furnish all affected barangays copies of said order.

Citizen suits filed under R.A. No. 8749 and R.A. No. 9003 shall be governed by their respective provisions.

SECTION 6. *Service of the Complaint on the Government or Its Agencies.* – Upon the filing of the complaint, the plaintiff is required to furnish the government or the appropriate agency, although not a party, a copy of the complaint. Proof of service upon the government or the appropriate agency shall be attached to the complaint.

SECTION 7. *Assignment by Raffle.* – If there is only one (1) designated branch in a multiple-sala court, the executive judge shall immediately refer the case to said branch. If there are two (2) or more designated branches, the executive judge shall conduct a special raffle on the day the complaint is filed.

SECTION 8. *Issuance of Temporary Environmental Protection Order (TEPO).* – If it appears from the verified complaint with a prayer for the issuance of an Environmental Protection Order (EPO) that the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of the multiple-sala court before raffle or the presiding judge of a single-sala court as the case may be, may issue *ex parte* a TEPO effective for only seventy-two (72) hours from date of the receipt of the TEPO by the party or person enjoined. Within said period, the court where the case is assigned, shall conduct a summary hearing to determine whether the TEPO may be extended until the termination of the case.

The court where the case is assigned, shall periodically monitor the existence of acts that are the subject matter of the TEPO even if issued by the executive judge, and may lift the same at any time as circumstances may warrant.

The applicant shall be exempted from the posting of a bond for the issuance of a TEPO.

SECTION 9. *Action on Motion for Dissolution of TEPO.* – The grounds for motion

to dissolve a TEPO shall be supported by affidavits of the party or person enjoined which the applicant may oppose, also by affidavits.

The TEPO may be dissolved if it appears after hearing that its issuance or continuance would cause irreparable damage to the party or person enjoined while the applicant may be fully compensated for such damages as he may suffer and subject to the posting of a sufficient bond by the party or person enjoined.

SECTION 10. *Prohibition Against Temporary Restraining Order (TRO) and Preliminary Injunction.* – Except the Supreme Court, no court can issue a TRO or writ of preliminary injunction against lawful actions of government agencies that enforce environmental laws or prevent violations thereof.

SECTION 11. *Report on TEPO, EPO, TRO or Preliminary Injunction.* – The judge shall report any action taken on a TEPO, EPO, TRO or a preliminary injunction, including its modification and dissolution, to the Supreme Court, through the Office of the Court Administrator, within ten (10) days from the action taken.

SECTION 12. *Payment of Filing and Other Legal Fees.* – The payment of filing and other legal fees by the plaintiff shall be deferred until after judgment unless the plaintiff is allowed to litigate as an indigent. It shall constitute a first lien on the judgment award.

For a citizen suit, the court shall defer the payment of filing and other legal fees that shall serve as first lien on the judgment award.

SECTION 13. *Service of Summons, Orders and Other Court Processes.* – The summons, orders and other court processes may be served by the sheriff, his deputy or other proper court officer or for justifiable reasons, by the counsel or representative of the plaintiff or any suitable person authorized or deputized by the court issuing the summons.

Any private person who is authorized or deputized by the court to serve summons, orders and other court processes shall for that purpose be considered an officer of the court.

The summons shall be served on the defendant, together with a copy of an order informing all parties that they have fifteen (15) days from the filing of an answer, within which to avail of interrogatories to parties under Rule 25 of the Rules of Court and request for admission by adverse party under Rule 26, or at their discretion, make use of depositions under Rule 23 or other measures under Rules 27 and 28.

Should personal and substituted service fail, summons by publication shall be allowed. In the case of juridical entities, summons by publication shall be done by indicating the names of the officers or their duly authorized representatives.

SECTION 14. *Verified Answer.* – Within fifteen (15) days from receipt of summons, the defendant shall file a verified answer to the complaint and serve a copy thereof on the plaintiff. The defendant shall attach affidavits of witnesses, reports, studies of experts and all evidence in support of the defense.

Affirmative and special defenses not pleaded shall be deemed waived, except lack of jurisdiction.

Cross-claims and compulsory counterclaims not asserted shall be considered barred. The answer to counterclaims or cross-claims shall be filed and served within ten (10) days from service of the answer in which they are pleaded.

SECTION 15. *Effect of Failure to Answer.* – Should the defendant fail to answer the complaint within the period provided, the court shall declare defendant in default and upon motion of the plaintiff, shall receive evidence *ex parte* and render judgment

based thereon and the reliefs prayed for.

RULE 3

Pre-Trial

SECTION 1. *Notice of Pre-Trial.* – Within two (2) days from the filing of the answer to the counterclaim or cross-claim, if any, the branch clerk of court shall issue a notice of the pre-trial to be held not later than one (1) month from the filing of the last pleading.

The court shall schedule the pre-trial and set as many pre-trial conferences as may be necessary within a period of two (2) months counted from the date of the first pre-trial conference.

SECTION 2. *Pre-Trial Brief.* – At least three (3) days before the pre-trial, the parties shall submit pre-trial briefs containing the following:

- (a) A statement of their willingness to enter into an amicable settlement indicating the desired terms thereof or to submit the case to any of the alternative modes of dispute resolution;
- (b) A summary of admitted facts and proposed stipulation of facts;
- (c) The legal and factual issues to be tried or resolved. For each factual issue, the parties shall state all evidence to support their positions thereon. For each legal issue, parties shall state the applicable law and jurisprudence supporting their respective positions thereon;
- (d) The documents or exhibits to be presented, including depositions, answers to interrogatories and answers to written request for admission by adverse party, stating the purpose thereof;
- (e) A manifestation of their having availed of discovery procedures or their intention to avail themselves of referral to a commissioner or panel of experts;
- (f) The number and names of the witnesses and the substance of their affidavits;
- (g) Clarificatory questions from the parties; and
- (h) List of cases arising out of the same facts pending before other courts or administrative agencies.

Failure to comply with the required contents of a pre-trial brief may be a ground for contempt.

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.

SECTION 3. *Referral to Mediation.* – At the start of the pre-trial conference, the court shall inquire from the parties if they have settled the dispute; otherwise, the court shall immediately refer the parties or their counsel, if authorized by their clients, to the Philippine Mediation Center (PMC) unit for purposes of mediation. If not available, the court shall refer the case to the clerk of court or legal researcher for mediation.

Mediation must be conducted within a non-extendible period of thirty (30) days from receipt of notice of referral to mediation.

The mediation report must be submitted within ten (10) days from the expiration of the 30-day period.

SECTION 4. *Preliminary Conference.* – If mediation fails, the court will schedule the continuance of the pre-trial. Before the scheduled date of continuance, the court may refer the case to the branch clerk of court for a preliminary conference for the following purposes:

- (a) To assist the parties in reaching a settlement;
- (b) To mark the documents or exhibits to be presented by the parties and copies thereof to be attached to the records after comparison with the originals;
- (c) To ascertain from the parties the undisputed facts and admissions on the genuineness and due execution of the documents marked as exhibits;
- (d) To require the parties to submit the depositions taken under Rule 23 of the Rules of Court, the answers to written interrogatories under Rule 25, and the answers to request for admissions by the adverse party under Rule 26;
- (e) To require the production of documents or things requested by a party under Rule 27 and the results of the physical and mental examination of persons under Rule 28;
- (f) To consider such other matters as may aid in its prompt disposition;
- (g) To record the proceedings in the "Minutes of Preliminary Conference" to be signed by both parties or their counsels;
- (h) To mark the affidavits of witnesses which shall be in question and answer form and shall constitute the direct examination of the witnesses; and
- (i) To attach the minutes together with the marked exhibits before the pre-trial proper.

The parties or their counsel must submit to the branch clerk of court the names, addresses and contact numbers of the affiants.

During the preliminary conference, the branch clerk of court shall also require the parties to submit the depositions taken under Rule 23 of the Rules of Court, the answers to written interrogatories under Rule 25 and the answers to request for admissions by the adverse party under Rule 26. The branch clerk of court may also require the production of documents or things requested by a party under Rule 27 and the results of the physical and mental examination of persons under Rule 28.

SECTION 5. *Pre-Trial Conference; Consent Decree.* – The judge shall put the parties and their counsels under oath, and they shall remain under oath in all pre-trial conferences.

The judge shall exert best efforts to persuade the parties to arrive at a settlement of the dispute. The judge may issue a consent decree approving the

agreement between the parties in accordance with law, morals, public order and public policy to protect the right of the people to a balanced and healthful ecology.

Evidence not presented during the pre-trial, except newly-discovered evidence, shall be deemed waived.

SECTION 6. *Failure to Settle*. – If there is no full settlement, the judge shall:

- (a) Adopt the minutes of the preliminary conference as part of the pre-trial proceedings and confirm the markings of exhibits or substituted photocopies and admissions on the genuineness and due execution of documents;
- (b) Determine if there are cases arising out of the same facts pending before other courts and order its consolidation if warranted;
- (c) Determine if the pleadings are in order and if not, order the amendments if necessary;
- (d) Determine if interlocutory issues are involved and resolve the same;
- (e) Consider the adding or dropping of parties;
- (f) Scrutinize every single allegation of the complaint, answer and other pleadings and attachments thereto, and the contents of documents and all other evidence identified and pre-marked during pre-trial in determining further admissions;
- (g) Obtain admissions based on the affidavits of witnesses and evidence attached to the pleadings or submitted during pre-trial;
- (h) Define and simplify the factual and legal issues arising from the pleadings and evidence. Uncontroverted issues and frivolous claims or defenses should be eliminated;
- (i) Discuss the propriety of rendering a summary judgment or a judgment based on the pleadings, evidence and admissions made during pre-trial;
- (j) Observe the Most Important Witness Rule in limiting the number of witnesses, determining the facts to be proved by each witness and fixing the approximate number of hours per witness;
- (k) Encourage referral of the case to a trial by commissioner under Rule 32 of the Rules of Court or to a mediator or arbitrator under any of the alternative modes of dispute resolution governed by the Special Rules of Court on Alternative Dispute Resolution;
- (l) Determine the necessity of engaging the services of a qualified expert as a friend of the court (*amicus curiae*); and
- (m) Ask parties to agree on the specific trial dates for continuous trial, comply with the one-day examination of witness rule, adhere to the case flow chart determined by the court which shall contain the different stages of the proceedings up to the promulgation of the decision and use the time frame for each stage in setting the trial dates.

SECTION 7. *Effect of Failure to Appear at Pre-Trial.* – The court shall not dismiss the complaint, except upon repeated and unjustified failure of the plaintiff to appear. The dismissal shall be without prejudice, and the court may proceed with the counterclaim.

If the defendant fails to appear at the pre-trial, the court shall receive evidence *ex parte*.

SECTION 8. *Minutes of Pre-Trial.* – The minutes of each pre-trial conference shall contain matters taken up therein, more particularly admissions of facts and exhibits, and shall be signed by the parties and their counsel.

SECTION 9. *Pre-Trial Order.* – Within ten (10) days after the termination of the pre-trial, the court shall issue a pre-trial order setting forth the actions taken during the pre-trial conference, the facts stipulated, the admissions made, the evidence marked, the number of witnesses to be presented and the schedule of trial. Said order shall bind the parties, limit the trial to matters not disposed of and control the course of action during the trial.

SECTION 10. *Efforts to Settle.* – The court shall endeavor to make the parties agree to compromise or settle in accordance with law at any stage of the proceedings before rendition of judgment.

RULE 4

Trial

SECTION 1. *Continuous Trial.* – The judge shall conduct continuous trial which shall not exceed two (2) months from the date of the issuance of the pre-trial order.

Before the expiration of the two-month period, the judge may ask the Supreme Court for the extension of the trial period for justifiable cause.

SECTION 2. *Affidavits in Lieu of Direct Examination.* – In lieu of direct examination, affidavits marked during the pre-trial shall be presented as direct examination of affiants subject to cross-examination by the adverse party.

SECTION 3. *One-Day Examination of Witness Rule.* – The court shall strictly adhere to the rule that a witness has to be fully examined in one (1) day, subject to the court's discretion of extending the examination for justifiable reason. After the presentation of the last witness, only oral offer of evidence shall be allowed, and the opposing party shall immediately interpose his objections. The judge shall forthwith rule on the offer of evidence in open court.

SECTION 4. *Submission of Case for Decision; Filing of Memoranda.* – After the last party has rested its case, the court shall issue an order submitting the case for decision.

The court may require the parties to submit their respective memoranda, if possible in electronic form, within a non-extendible period of thirty (30) days from the date the case is submitted for decision.

The court shall have a period of sixty (60) days to decide the case from the date the case is submitted for decision.

SECTION 5. *Period to Try and Decide.* – The court shall have a period of one (1) year from the filing of the complaint to try and decide the case. Before the expiration of the one-year period, the court may petition the Supreme Court for the extension of the period for justifiable cause.

The court shall prioritize the adjudication of environmental cases.

RULE 5

Judgment and Execution

SECTION 1. *Reliefs in a Citizen Suit.* – If warranted, the court may grant to the plaintiff proper reliefs which shall include the protection, preservation or rehabilitation of the environment and the payment of attorney's fees, costs of suit and other litigation expenses. It may also require the violator to submit a program of rehabilitation or restoration of the environment, the costs of which shall be borne by the violator, or to contribute to a special trust fund for that purpose subject to the control of the court.

SECTION 2. *Judgment Not Stayed by Appeal.* – Any judgment directing the performance of acts for the protection, preservation or rehabilitation of the environment shall be executory pending appeal unless restrained by the appellate court.

SECTION 3. *Permanent EPO; Writ of Continuing Mandamus.* – In the judgment, the court may convert the TEPO to a permanent EPO or issue a writ of continuing *mandamus* directing the performance of acts which shall be effective until the judgment is fully satisfied.

The court may, by itself or through the appropriate government agency, monitor the execution of the judgment and require the party concerned to submit written reports on a quarterly basis or sooner as may be necessary, detailing the progress of the execution and satisfaction of the judgment. The other party may, at its option, submit its comments or observations on the execution of the judgment.

SECTION 4. *Monitoring of Compliance with Judgment and Orders of the Court by a Commissioner.* – The court may *motu proprio*, or upon motion of the prevailing party, order that the enforcement of the judgment or order be referred to a commissioner to be appointed by the court. The commissioner shall file with the court written progress reports on a quarterly basis or more frequently when necessary.

SECTION 5. *Return of Writ of Execution.* – The process of execution shall terminate upon a sufficient showing that the decision or order has been implemented to the satisfaction of the court in accordance with Section 14, Rule 39 of the Rules of Court.

RULE 6

Strategic Lawsuit Against Public Participation

SECTION 1. *Strategic Lawsuit Against Public Participation (SLAPP).* – A legal action filed to harass, vex, exert undue pressure or stifle any legal recourse that any person, institution or the government has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights shall be treated as a SLAPP and shall be governed by these Rules.

SECTION 2. *SLAPP as a Defense; How Alleged.* – In a SLAPP filed against a person involved in the enforcement of environmental laws, protection of the environment, or assertion of environmental rights, the defendant may file an answer interposing as a defense that the case is a SLAPP and shall be supported by documents, affidavits, papers and other evidence; and, by way of counterclaim, pray for damages, attorney's fees and costs of suit.

The court shall direct the plaintiff or adverse party to file an opposition showing the suit is not a SLAPP, attaching evidence in support thereof, within a non-extendible period of five (5) days from receipt of notice that an answer has been filed.

The defense of a SLAPP shall be set for hearing by the court after issuance of the order to file an opposition within fifteen (15) days from filing of the comment or the

lapse of the period.

SECTION 3. *Summary Hearing.* – The hearing on the defense of a SLAPP shall be summary in nature. The parties must submit all available evidence in support of their respective positions. The party seeking the dismissal of the case must prove by substantial evidence that his acts for the enforcement of environmental law is a legitimate action for the protection, preservation and rehabilitation of the environment. The party filing the action assailed as a SLAPP shall prove by preponderance of evidence that the action is not a SLAPP and is a valid claim.

SECTION 4. *Resolution of the Defense of a SLAPP.* – The affirmative defense of a SLAPP shall be resolved within thirty (30) days after the summary hearing. If the court dismisses the action, the court may award damages, attorney's fees and costs of suit under a counterclaim if such has been filed. The dismissal shall be with prejudice.

If the court rejects the defense of a SLAPP, the evidence adduced during the summary hearing shall be treated as evidence of the parties on the merits of the case. The action shall proceed in accordance with the Rules of Court.

PART III

Special Civil Actions

RULE 7

Writ of Kalikasan

SECTION 1. *Nature of the Writ.* – The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

SECTION 2. *Contents of the Petition.* – The verified petition shall contain the following:

- (a) The personal circumstances of the petitioner;
- (b) The name and personal circumstances of the respondent or if the name and personal circumstances are unknown and uncertain, the respondent may be described by an assumed appellation;
- (c) The environmental law, rule or regulation violated or threatened to be violated, the act or omission complained of, and the environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.
- (d) All relevant and material evidence consisting of the affidavits of witnesses, documentary evidence, scientific or other expert studies, and if possible, object evidence;
- (e) The certification of petitioner under oath that: (1) petitioner has not commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency, and no such other action or

claim is pending therein; (2) if there is such other pending action or claim, a complete statement of its present status; (3) if petitioner should learn that the same or similar action or claim has been filed or is pending, petitioner shall report to the court that fact within five (5) days therefrom; and

(f) The reliefs prayed for which may include a prayer for the issuance of a TEPO.

SECTION 3. *Where to File.* – The petition shall be filed with the Supreme Court or with any of the stations of the Court of Appeals.

SECTION 4. *No Docket Fees.* – The petitioner shall be exempt from the payment of docket fees.

SECTION 5. *Issuance of the Writ.* – Within three (3) days from the date of filing of the petition, if the petition is sufficient in form and substance, the court shall give an order: (a) issuing the writ; and (b) requiring the respondent to file a verified return as provided in Section 8 of this Rule. The clerk of court shall forthwith issue the writ under the seal of the court including the issuance of a cease and desist order and other temporary reliefs effective until further order.

SECTION 6. *How the Writ is Served.* – The writ shall be served upon the respondent by a court officer or any person deputized by the court, who shall retain a copy on which to make a return of service. In case the writ cannot be served personally, the rule on substituted service shall apply.

SECTION 7. *Penalty for Refusing to Issue or Serve the Writ.* – A clerk of court who unduly delays or refuses to issue the writ after its allowance or a court officer or deputized person who unduly delays or refuses to serve the same shall be punished by the court for contempt without prejudice to other civil, criminal or administrative actions.

SECTION 8. *Return of Respondent; Contents.* – Within a non-extendible period of ten (10) days after service of the writ, the respondent shall file a verified return which shall contain all defenses to show that respondent did not violate or threaten to violate, or allow the violation of any environmental law, rule or regulation or commit any act resulting to environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

All defenses not raised in the return shall be deemed waived.

The return shall include affidavits of witnesses, documentary evidence, scientific or other expert studies, and if possible, object evidence, in support of the defense of the respondent.

A general denial of allegations in the petition shall be considered as an admission thereof.

SECTION 9. *Prohibited Pleadings and Motions.* – The following pleadings and motions are prohibited:

- (a) Motion to dismiss;
- (b) Motion for extension of time to file return;
- (c) Motion for postponement;
- (d) Motion for a bill of particulars;

- (e) Counterclaim or cross-claim;
- (f) Third-party complaint;
- (g) Reply; and
- (h) Motion to declare respondent in default.

SECTION 10. *Effect of Failure to File Return.* – In case the respondent fails to file a return, the court shall proceed to hear the petition *ex parte*.

SECTION 11. *Hearing.* – Upon receipt of the return of the respondent, the court may call a preliminary conference to simplify the issues, determine the possibility of obtaining stipulations or admissions from the parties, and set the petition for hearing.

The hearing including the preliminary conference shall not extend beyond sixty (60) days and shall be given the same priority as petitions for the writs of *habeas corpus*, *amparo* and *habeas data*.

SECTION 12. *Discovery Measures.* – A party may file a verified motion for the following reliefs:

- (a) *Ocular Inspection; Order* – The motion must show that an ocular inspection order is necessary to establish the magnitude of the violation or the threat as to prejudice the life, health or property of inhabitants in two or more cities or provinces. It shall state in detail the place or places to be inspected. It shall be supported by affidavits of witnesses having personal knowledge of the violation or threatened violation of environmental law.

After hearing, the court may order any person in possession or control of a designated land or other property to permit entry for the purpose of inspecting or photographing the property or any relevant object or operation thereon.

The order shall specify the person or persons authorized to make the inspection and the date, time, place and manner of making the inspection and may prescribe other conditions to protect the constitutional rights of all parties.

- (b) *Production or inspection of documents or things; order* – The motion must show that a production order is necessary to establish the magnitude of the violation or the threat as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

After hearing, the court may order any person in possession, custody or control of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, or objects in digitized or electronic form, which constitute or contain evidence relevant to the petition or the return, to produce and permit their inspection, copying or photographing by or on behalf of the movant.

The production order shall specify the person or persons authorized to make the production and the date, time, place and manner of making the inspection or production and may prescribe other conditions to protect the constitutional rights of all parties.

SECTION 13. *Contempt.* – The court may after hearing punish the respondent who refuses or unduly delays the filing of a return, or who makes a false return, or any person who disobeys or resists a lawful process or order of the court for indirect contempt under Rule 71 of the Rules of Court.

SECTION 14. *Submission of Case for Decision; Filing of Memoranda.* – After hearing, the court shall issue an order submitting the case for decision. The court may require the filing of memoranda and if possible, in its electronic form, within a non-extendible period of thirty (30) days from the date the petition is submitted for decision.

SECTION 15. *Judgment.* – Within sixty (60) days from the time the petition is submitted for decision, the court shall render judgment granting or denying the privilege of the writ of *kalikasan*.

The reliefs that may be granted under the writ are the following:

- (a) Directing respondent to permanently cease and desist from committing acts or neglecting the performance of a duty in violation of environmental laws resulting in environmental destruction or damage;
- (b) Directing the respondent public official, government agency, private person or entity to protect, preserve, rehabilitate or restore the environment;
- (c) Directing the respondent public official, government agency, private person or entity to monitor strict compliance with the decision and orders of the court;
- (d) Directing the respondent public official, government agency, or private person or entity to make periodic reports on the execution of the final judgment; and
- (e) Such other reliefs which relate to the right of the people to a balanced and healthful ecology or to the protection, preservation, rehabilitation or restoration of the environment, except the award of damages to individual petitioners.

SECTION 16. *Appeal.* – Within fifteen (15) days from the date of notice of the adverse judgment or denial of motion for reconsideration, any party may appeal to the Supreme Court under Rule 45 of the Rules of Court. The appeal may raise questions of fact.

SECTION 17. *Institution of Separate Actions.* – The filing of a petition for the issuance of the writ of *kalikasan* shall not preclude the filing of separate civil, criminal or administrative actions.

RULE 8

Writ of Continuing Mandamus

SECTION 1. *Petition for Continuing Mandamus.* – When any agency or instrumentality of the government or officer thereof unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station in connection with the enforcement or violation of an environmental law rule or regulation or a right therein, or unlawfully excludes another from the use or enjoyment of such right and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a

verified petition in the proper court, alleging the facts with certainty, attaching thereto supporting evidence, specifying that the petition concerns an environmental law, rule or regulation, and praying that judgment be rendered commanding the respondent to do an act or series of acts until the judgment is fully satisfied, and to pay damages sustained by the petitioner by reason of the malicious neglect to perform the duties of the respondent, under the law, rules or regulations. The petition shall also contain a sworn certification of non-forum shopping.

SECTION 2. *Where to File the Petition.* – The petition shall be filed with the Regional Trial Court exercising jurisdiction over the territory where the actionable neglect or omission occurred or with the Court of Appeals or the Supreme Court.

SECTION 3. *No Docket Fees.* – The petitioner shall be exempt from the payment of docket fees.

SECTION 4. *Order to Comment.* – If the petition is sufficient in form and substance, the court shall issue the writ and require the respondent to comment on the petition within ten (10) days from receipt of a copy thereof. Such order shall be served on the respondents in such manner as the court may direct, together with a copy of the petition and any annexes thereto.

SECTION 5. *Expediting Proceedings; TEPO.* – The court in which the petition is filed may issue such orders to expedite the proceedings, and it may also grant a TEPO for the preservation of the rights of the parties pending such proceedings.

SECTION 6. *Proceedings After Comment is Filed.* – After the comment is filed or the time for the filing thereof has expired, the court may hear the case which shall be summary in nature or require the parties to submit memoranda. The petition shall be resolved without delay within sixty (60) days from the date of the submission of the petition for resolution.

SECTION 7. *Judgment.* – If warranted, the court shall grant the privilege of the writ of continuing *mandamus* requiring respondent to perform an act or series of acts until the judgment is fully satisfied and to grant such other reliefs as may be warranted resulting from the wrongful or illegal acts of the respondent. The court shall require the respondent to submit periodic reports detailing the progress and execution of the judgment, and the court may, by itself or through a commissioner or the appropriate government agency, evaluate and monitor compliance. The petitioner may submit its comments or observations on the execution of the judgment.

SECTION 8. *Return of the Writ.* – The periodic reports submitted by the respondent detailing compliance with the judgment shall be contained in partial returns of the writ.

Upon full satisfaction of the judgment, a final return of the writ shall be made to the court by the respondent. If the court finds that the judgment has been fully implemented, the satisfaction of judgment shall be entered in the court docket.

PART IV

Criminal Procedure

RULE 9

Prosecution of Offenses

SECTION 1. *Who May File.* – Any offended party, peace officer or any public officer charged with the enforcement of an environmental law may file a complaint

before the proper officer in accordance with the Rules of Court.

SECTION 2. *Filing of the Information.* – An information, charging a person with a violation of an environmental law and subscribed by the prosecutor, shall be filed with the court.

SECTION 3. *Special Prosecutor.* – In criminal cases, where there is no private offended party, a counsel whose services are offered by any person or organization may be allowed by the court as special prosecutor, with the consent of and subject to the control and supervision of the public prosecutor.

RULE 10

Prosecution of Civil Actions

SECTION 1. *Institution of Criminal and Civil Actions.* – When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged, shall be deemed instituted with the criminal action unless the complainant waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.

Unless the civil action has been instituted prior to the criminal action, the reservation of the right to institute separately the civil action shall be made during arraignment.

In case civil liability is imposed or damages are awarded, the filing and other legal fees shall be imposed on said award in accordance with Rule 141 of the Rules of Court, and the fees shall constitute a first lien on the judgment award. The damages awarded in cases where there is no private offended party, less the filing fees, shall accrue to the funds of the agency charged with the implementation of the environmental law violated. The award shall be used for the restoration and rehabilitation of the environment adversely affected.

RULE 11

Arrest

SECTION 1. *Arrest Without Warrant; When Lawful.* – A peace officer or an individual deputized by the proper government agency may, without a warrant, arrest a person:

- (a) When, in his presence, the person to be arrested has committed, is actually committing or is attempting to commit an offense; or
- (b) When an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it.

Individuals deputized by the proper government agency who are enforcing environmental laws shall enjoy the presumption of regularity under Section 3 (m), Rule 131 of the Rules of Court when effecting arrests for violations of environmental laws.

SECTION 2. *Warrant of Arrest.* – All warrants of arrest issued by the court shall be accompanied by a certified true copy of the information filed with the issuing court.

RULE 12

Custody and Disposition of Seized Items, Equipment, Paraphernalia, Conveyances and Instruments

SECTION 1. *Custody and Disposition of Seized Items.* – The custody and

disposition of seized items shall be in accordance with the applicable laws or rules promulgated by the concerned government agency.

SECTION 2. *Procedure.* – In the absence of applicable laws or rules promulgated by the concerned government agency, the following procedure shall be observed:

- (a) The apprehending officer having initial custody and control of the seized items, equipment, paraphernalia, conveyances and instruments shall physically inventory and whenever practicable, photograph the same in the presence of the person from whom such items were seized.
- (b) Thereafter, the apprehending officer shall submit to the issuing court the return of the search warrant within five (5) days from date of seizure or in case of warrantless arrest, submit within five (5) days from date of seizure, the inventory report, compliance report, photographs, representative samples and other pertinent documents to the public prosecutor for appropriate action.
- (c) Upon motion by any interested party, the court may direct the auction sale of seized items, equipment, paraphernalia, tools or instruments of the crime. The court shall, after hearing, fix the minimum bid price based on the recommendation of the concerned government agency. The sheriff shall conduct the auction.
- (d) The auction sale shall be with notice to the accused, the person from whom the items were seized, or the owner thereof and the concerned government agency.
- (e) The notice of auction shall be posted in three conspicuous places in the city or municipality where the items, equipment, paraphernalia, tools or instruments of the crime were seized.
- (f) The proceeds shall be held in trust and deposited with the government depository bank for disposition according to the judgment.

RULE 13

Provisional Remedies

SECTION 1. *Attachment in Environmental Cases.* – The provisional remedy of attachment under Rule 127 of the Rules of Court may be availed of in environmental cases.

SECTION 2. *Environmental Protection Order (EPO); Temporary Environmental Protection Order (TEPO) in Criminal Cases.* – The procedure for and issuance of EPO and TEPO shall be governed by Rule 2 of these Rules.

RULE 14

Bail

SECTION 1. *Bail, Where Filed.* – Bail in the amount fixed may be filed with the court where the case is pending, or in the absence or unavailability of the judge thereof, with any regional trial judge, metropolitan trial judge, municipal trial judge or municipal circuit trial judge in the province, city or municipality. If the accused is arrested in a province, city or municipality other than where the case is pending, bail may also be filed with any Regional Trial Court of said place, or if no judge thereof is available, with any metropolitan trial judge, municipal trial judge or municipal circuit trial judge therein.

If the court grants bail, the court may issue a hold-departure order in appropriate cases.

SECTION 2. *Duties of the Court.* – Before granting the application for bail, the judge must read the information in a language known to and understood by the accused and require the accused to sign a written undertaking, as follows:

- (a) To appear before the court that issued the warrant of arrest for arraignment purposes on the date scheduled, and if the accused fails to appear without justification on the date of arraignment, accused waives the reading of the information and authorizes the court to enter a plea of not guilty on behalf of the accused and to set the case for trial;
- (b) To appear whenever required by the court where the case is pending; and
- (c) To waive the right of the accused to be present at the trial, and upon failure of the accused to appear without justification and despite due notice, the trial may proceed *in absentia*.

RULE 15

Arraignment and Plea

SECTION 1. *Arraignment.* – The court shall set the arraignment of the accused within fifteen (15) days from the time it acquires jurisdiction over the accused, with notice to the public prosecutor and offended party or concerned government agency that it will entertain plea-bargaining on the date of the arraignment.

SECTION 2. *Plea-Bargaining.* – On the scheduled date of arraignment, the court shall consider plea-bargaining arrangements. Where the prosecution and offended party or concerned government agency agree to the plea offered by the accused, the court shall:

- (a) Issue an order which contains the plea-bargaining arrived at;
- (b) Proceed to receive evidence on the civil aspect of the case, if any; and
- (c) Render and promulgate judgment of conviction, including the civil liability for damages.

RULE 16

Pre-Trial

SECTION 1. *Setting of Pre-Trial Conference.* – After the arraignment, the court shall set the pre-trial conference within thirty (30) days. It may refer the case to the branch clerk of court, if warranted, for a preliminary conference to be set at least three (3) days prior to the pre-trial.

SECTION 2. *Preliminary Conference.* – The preliminary conference shall be for the following purposes:

- (a) To assist the parties in reaching a settlement of the civil aspect of the case;
- (b) To mark the documents to be presented as exhibits;
- (c) To attach copies thereof to the records after comparison with the originals;

- (d) To ascertain from the parties the undisputed facts and admissions on the genuineness and due execution of documents marked as exhibits;
- (e) To consider such other matters as may aid in the prompt disposition of the case;
- (f) To record the proceedings during the preliminary conference in the Minutes of Preliminary Conference to be signed by the parties and counsel;
- (g) To mark the affidavits of witnesses which shall be in question and answer form and shall constitute the direct examination of the witnesses; and
- (h) To attach the Minutes and marked exhibits to the case record before the pre-trial proper.

The parties or their counsel must submit to the branch clerk of court the names, addresses and contact numbers of the affiants.

SECTION 3. *Pre-Trial Duty of the Judge.* – During the pre-trial, the court shall:

- (a) Place the parties and their counsels under oath;
- (b) Adopt the minutes of the preliminary conference as part of the pre-trial proceedings, confirm markings of exhibits or substituted photocopies and admissions on the genuineness and due execution of documents, and list object and testimonial evidence;
- (c) Scrutinize the information and the statements in the affidavits and other documents which form part of the record of the preliminary investigation together with other documents identified and marked as exhibits to determine further admissions of facts as to:
 - i. The court's territorial jurisdiction relative to the offense(s) charged;
 - ii. Qualification of expert witnesses; and
 - iii. Amount of damages;
- (d) Define factual and legal issues;
- (e) Ask parties to agree on the specific trial dates and adhere to the flow chart determined by the court which shall contain the time frames for the different stages of the proceeding up to promulgation of decision;
- (f) Require the parties to submit to the branch clerk of court the names, addresses and contact numbers of witnesses that need to be summoned by subpoena; and
- (g) Consider modification of order of trial if the accused admits the charge but interposes a lawful defense.

SECTION 4. *Manner of Questioning.* – All questions or statements must be directed to the court.

SECTION 5. *Agreements or Admissions.* – All agreements or admissions made

or entered during the pre-trial conference shall be reduced in writing and signed by the accused and counsel; otherwise, they cannot be used against the accused. The agreements covering the matters referred to in Section 1, Rule 118 of the Rules of Court shall be approved by the court.

SECTION 6. *Record of Proceedings.* – All proceedings during the pre-trial shall be recorded, the transcripts prepared and the minutes signed by the parties or their counsels.

SECTION 7. *Pre-Trial Order.* – The court shall issue a pre-trial order within ten (10) days after the termination of the pre-trial, setting forth the actions taken during the pre-trial conference, the facts stipulated, the admissions made, evidence marked, the number of witnesses to be presented and the schedule of trial. The order shall bind the parties and control the course of action during the trial.

RULE 17

Trial

SECTION 1. *Continuous Trial.* – The court shall endeavor to conduct continuous trial which shall not exceed three (3) months from the date of the issuance of the pre-trial order.

SECTION 2. *Affidavit in Lieu of Direct Examination.* – Affidavit in lieu of direct examination shall be used, subject to cross-examination and the right to object to inadmissible portions of the affidavit.

SECTION 3. *Submission of Memoranda.* – The court may require the parties to submit their respective memoranda and if possible, in electronic form, within a non-extendible period of thirty (30) days from the date the case is submitted for decision.

With or without any memoranda filed, the court shall have a period of sixty (60) days to decide the case counted from the last day of the 30-day period to file the memoranda.

SECTION 4. *Disposition Period.* – The court shall dispose the case within a period of ten (10) months from the date of arraignment.

SECTION 5. *Pro Bono Lawyers.* – If the accused cannot afford the services of counsel or there is no available public attorney, the court shall require the Integrated Bar of the Philippines to provide *pro bono* lawyers for the accused.

RULE 18

Subsidiary Liability

SECTION 1. *Subsidiary Liability.* – In case of conviction of the accused and subsidiary liability is allowed by law, the court may, by motion of the person entitled to recover under judgment, enforce such subsidiary liability against a person or corporation subsidiarily liable under Article 102 and Article 103 of the Revised Penal Code.

RULE 19

Strategic Lawsuit Against Public Participation in Criminal Cases

SECTION 1. *Motion to Dismiss.* – Upon the filing of an information in court and before arraignment, the accused may file a motion to dismiss on the ground that the criminal action is a SLAPP.

SECTION 2. *Summary Hearing.* – The hearing on the defense of a SLAPP shall be summary in nature. The parties must submit all the available evidence in support of their respective positions. The party seeking the dismissal of the case must prove by

substantial evidence that his acts for the enforcement of environmental law is a legitimate action for the protection, preservation and rehabilitation of the environment. The party filing the action assailed as a SLAPP shall prove by preponderance of evidence that the action is not a SLAPP.

SECTION 3. *Resolution.* – The court shall grant the motion if the accused establishes in the summary hearing that the criminal case has been filed with intent to harass, vex, exert undue pressure or stifle any legal recourse that any person, institution or the government has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights.

If the court denies the motion, the court shall immediately proceed with the arraignment of the accused.

PART V

Evidence

RULE 20

Precautionary Principle

SECTION 1. *Applicability.* – When there is a lack of full scientific certainty in establishing a causal link between human activity and environmental effect, the court shall apply the precautionary principle in resolving the case before it.

The constitutional right of the people to a balanced and healthful ecology shall be given the benefit of the doubt.

SECTION 2. *Standards for Application.* – In applying the precautionary principle, the following factors, among others, may be considered: (1) threats to human life or health; (2) inequity to present or future generations; or (3) prejudice to the environment without legal consideration of the environmental rights of those affected.

RULE 21

Documentary Evidence

SECTION 1. *Photographic, Video and Similar Evidence.* – Photographs, videos and similar evidence of events, acts, transactions of wildlife, wildlife by-products or derivatives, forest products or mineral resources subject of a case shall be admissible when authenticated by the person who took the same, by some other person present when said evidence was taken, or by any other person competent to testify on the accuracy thereof.

SECTION 2. *Entries in Official Records.* – Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated.

RULE 22

Final Provisions

SECTION 1. *Effectivity.* – These Rules shall take effect within fifteen (15) days following publication once in a newspaper of general circulation.

SECTION 2. *Application of the Rules of Court.* – The Rules of Court shall apply in a suppletory manner, except as otherwise provided herein.

Sub-Committee on the Rules of Procedure for Environmental Cases

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Justice Diosdado M. Peralta

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