

DRAFT RULE OF PROCEDURE FOR ENVIRONMENTAL CASES

RULE 1

GENERAL PROVISIONS

SEC. 1. *Title.* — This Rule shall be known as “*The Rule of Procedure for Environmental Cases.*”

SEC. 2. *Application of the Rules of Court.* — The Rules of Court shall apply in a suppletory manner unless otherwise provided.

SEC. 3. *Scope.* — This Rule shall govern the procedure in civil, criminal, and special civil actions before the Regional Trial Courts, Metropolitan Trial Courts and Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts, particularly those designated as special courts to try and decide violations of environmental laws under SC Administrative Order No. 23-2008 and all other courts that may be designated as such, to try and decide cases involving provisions in environmental and other related laws, 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. 601, Revised Coast Guard Law
- (c) P.D. No. 705, Revised Forestry 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 Cutting of Trees in Public Roads, Plazas, etc.
- (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. 7161, Tax Laws Incorporated in the Revised Forestry Code and Other Environmental Laws
- (n) R.A. No. 7308, Seed Industry Development Act of 1992
- (o) R.A. No. 7586, National Integrated Protected Areas System Act including all laws, decrees, orders, proclamations, and issuances establishing protected areas
- (p) R.A. No. 7611, Strategic Environmental Plan for Palawan Act
- (q) R.A. 7900, High-Value Crops Development Act
- (r) R.A. No. 7942, Philippine Mining Act
- (s) R.A. No. 8048, Coconut Preservation Act
- (t) R.A. No. 8371, Indigenous People’s Rights Act

- (u) R.A. No. 8550, Philippine Fisheries Code
- (v) R.A. 8749, Clean Air Act
- (w) R.A. No. 9003, Ecological Solid Waste Management Act
- (x) R.A. No. 9072, National Caves & Cave Resource Management Act
- (y) R.A. No. 9147, Wildlife Conservation & Protection Act
- (z) R.A. 9175, Chainsaw Act
- (bb) R.A. 9275, Clean Water Act
- (cc) R.A. 9483, Oil Spill Compensation Act of 2007
- (dd) R.A. No. 9593, Renewable Energy Act of 2008
- (ee) R.A. No. 9637, Philippine Biofuels Act

SEC. 4. *Substantive Rights.* — This Rule shall not diminish, increase or modify substantive rights recognized and protected by the Constitution.

SEC. 5. *Objectives.* — The objectives of this Rule are:

- (a) To protect and advance the constitutional right of the people to health and to a balanced and healthful ecology;
- (b) To provide a simplified, speedy, and inexpensive procedure and increased access to environmental justice and for the enforcement of rights and duties recognized under the Constitution and environmental laws;
- (c) To ensure the just administration of remedies and redress for violations of environmental laws;
- (d) To enable the courts to effectively and efficiently manage and monitor environmental cases.

SEC. 6. *Definition of Terms.* — For purposes of this Rule:

Aquatic resources include fish, all other aquatic flora and fauna and other living resources of the aquatic environment including, but not limited to, salt and corals; *By-product or derivatives* means any part taken or substance extracted from wildlife, in raw or in processed form. This includes stuffed animals and herbarium specimens;

Consent decree refers to judicially-approved settlement between concerned parties based on public interest and the public policy to protect the environment and ensure sustainable development;

Environmental law refers to laws identified in Section 3 of this Rule, and all other laws that relate to the preservation, protection, conservation, exploitation, utilization, and development of the environment and its natural resources, their implementing rules and regulations, guidelines, and administrative orders;

Environmental protection order (EPO) refers to a written order issued by the court directing or enjoining any government agency or person to undertake activities

aimed at protecting, preserving, rehabilitating or restoring the environment during the pendency of the case involving a violation of an environmental law;

Forest product means timber, pulpwood, firewood, bark, tree top, resin, gum, wood, oil, honey beeswax, nipa, rattan, or other forest growth such as grass, shrub, and flowering plant, the associated water, fish, game, scenic, historical, recreational and geologic resources in forest lands;

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;

Mineral resource means any concentration of minerals/rocks with potential economic value;

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 I

CIVIL PROCEDURE

RULE 2

PLEADINGS AND PARTIES

SEC. 1. *Pleadings allowed; Verification.* — The only pleadings allowed to be filed are complaints, compulsory counterclaims, cross-claims pleaded in the answer, the answers thereto, motion for intervention, and motion for reconsideration of the judgment.

All pleadings shall be verified.

SEC. 2. *Complaint.* — It is the initiatory pleading which shall contain the names of the parties, their addresses, the necessary allegations supporting the complaint, and the relief/s sought. It shall contain a certification against forum shopping. Plaintiff shall attach the affidavits of witnesses, documentary evidence, and other evidence available at the time of the filing of the complaint. The complaint shall state that it is covered by this Rule.

SEC. 3. *Provisional remedies.* — If it shall appear from the verified complaint and its attachments that there is a *prima facie* violation of any environmental law, the court may issue *ex parte* a temporary EPO to be effective only for a period of twenty (20) days from date of issuance thereof. Within the said 20-day period, the court must order said party or person to file his or her comment and appear in a hearing on the prayer for a writ of preliminary EPO. The scheduled hearing shall be summary in nature. The court at its discretion, may ask clarificatory questions to

the parties and their witnesses, who shall be placed under oath. The court shall immediately resolve the application for the prayer for a writ of preliminary EPO within the 20-day period based on the attachments to the complaint and statements or admissions of the parties during the hearing.

SEC. 4. *Prohibition against TRO and preliminary injunction* – The court is prohibited from issuing a temporary restraining order (TRO) or injunction against government agencies enforcing environmental laws.

If the complaint is misfiled as an environmental complaint, the court shall refer it to the executive judge for raffle to the proper court.

SEC. 5. *Who may file.* — Any person or group of persons, by themselves or through duly-authorized representatives, or in representation of others, including generations yet unborn, in a class suit, may file a civil action involving a violation or enforcement of environmental laws and shall include:

- (a) Any citizen;
- (b) Minors with the assistance of their parents or guardians;
- (c) People's and non-government organizations and public interest groups;
- (d) Indigenous peoples and local communities;
- (e) Others similarly situated.

Parties in interest shall have the right to intervene to protect their own individual interest.

SEC. 6. *Payment of legal fees.* — The plaintiff in an environmental civil action shall pay the docket and other legal fees prescribed under Rule 141 of the Revised Rules of Court, unless otherwise allowed to litigate as an indigent.

For citizen's suits filed for the specific purpose of enforcing the provisions of any environmental law against an existing and continuing violation, the court shall defer the payment of filing fees upon *prima facie* showing of the non-enforcement or violation complained of. The filing fee shall serve as first lien on the judgment award.

The citizen shall execute an affidavit stating the facts which show the non-enforcement or violation of environmental laws complained of, supported by an affidavit of a disinterested person attesting to the truth of the citizen's affidavit.

Any falsity in the affidavit of the citizen or disinterested person shall be sufficient cause to dismiss the complaint or action or to strike out the pleading of that party, without prejudice to whatever criminal liability may have been incurred.

In the event that the citizen should prevail, the court shall award reasonable attorney's fees, moral damages and litigation costs as appropriate.

The plaintiff shall be exempt from the filing of a bond for the issuance of a writ of preliminary EPO.

SEC. 7. *Service of summons.* — The summons may be served by the sheriff, his deputy, or other proper court officers or for justifiable reasons, the counsel or representative of the plaintiff or any suitable person authorized by the court issuing the summons.

The court shall state in the summons issued to the defendant that this Rule shall apply in the proceedings of the case.

Immediately upon the filing of the complaint, the court shall issue an order requiring the parties to avail of interrogatories to parties under Rule 25 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 within fifteen (15) days from the filing of the answer. A copy of the order shall be served upon the defendant together with summons and upon the plaintiff.

Should personal service fail, service by publication shall be allowed.

SEC. 8. *Order to intervene.* — Immediately after the issuance of the summons, the court shall issue an order which shall contain a brief description of the cause of action and require all interested parties to manifest their interest to intervene in the case within fifteen (15) days from notice. The plaintiff shall be responsible for the service of the order to the respective barangays affected by the class suit.

SEC. 9. *Answer.* — Within fifteen (15) days from service of summons, the defendant shall file his answer to the complaint and serve a copy thereof on the plaintiff. Affirmative and negative defenses not pleaded therein shall be deemed waived, except for lack of jurisdiction over the subject matter. Cross-claims and compulsory counter-claims not asserted in the answer 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.

The defendant shall attach affidavits of witnesses, documentary evidence and other evidence to the answer-

SEC. 10. *Effect of failure to answer.* — Should the defendant fail to answer the complaint within the period above provided, the court, *motu proprio* or on motion of the plaintiff, shall render judgment as may be warranted by the facts based on the reliefs prayed for. Provided however, that the court may in its discretion reduce the amount of damages and attorney's fees claimed for being excessive or otherwise unconscionable. This is without prejudice to the applicability of Section 4, Rule 18 of the Revised Rules of Court, if there are two or more defendants.

RULE 3

PRE-TRIAL

SEC. 1. *Notice of pre-trial* — Within three (3) days from filing of the answer, the branch clerk of court shall issue a notice of pre-trial.

SEC. 2 *Pre-trial brief*. — The parties shall submit, at least three (3) days before the pre-trial, 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 issues to be tried or resolved;
- (d) The documents or exhibits to be presented, stating the purpose thereof;
- (e) A manifestation of their having availed or their intention to avail themselves of discovery procedures or referral to commissioners; and
- (f) The number and names of the witnesses, the substance of their testimonies, and the approximate number of hours that will be required by the parties for the presentation of their respective witnesses.

The rule on the contents of the pre-trial brief must strictly be complied with.

The parties are bound by the representations and statements in their respective pre-trial briefs.

SEC. 3. *Pre-trial conference*. — At the start of the pre-trial conference, the court shall immediately refer the parties and/or their counsel if authorized by their clients to the PMC mediation unit for purposes of mediation if available. If mediation fails, the court will schedule the continuance of the pre-trial conference. Before the continuance, the court shall refer the case to the branch clerk of court for a preliminary conference to assist the parties in reaching a settlement, to mark the documents or exhibits to be presented by the parties and copies thereof to be attached to the records after comparison and to consider such other matters as may aid in its prompt disposition.

During the preliminary conference, the branch clerk of court shall also ascertain from the parties the undisputed facts and admissions on the genuineness and due execution of the documents marked as exhibits. The proceedings during the preliminary conference shall be recorded in the “Minutes of Preliminary Conference” to be signed by both parties and/or counsel.

The minutes of preliminary conference and the exhibits shall be attached by the branch clerk of court to the case record before the pre-trial.

Evidence not presented during pre-trial, except newly-discovered evidence and evidence not available on the date of the last pre-trial conference, shall be deemed waived.

SEC. 4 *Duty of the judge.* — Before the continuation of the pre-trial conference, the judge must study all the pleadings of the case, and determine the issues thereof and the respective positions of the parties thereon to enable him to intelligently steer the parties toward a possible amicable settlement of the case, or, at the very least, to help reduce and limit the issues. The judge should not allow the termination of pre-trial simply because of the manifestation of the parties that they cannot settle the case. He should expose the parties to the advantages of pre-trial. He must also be mindful that there are other important aspects of the pre-trial that ought to be taken up to expedite the disposition of the case.

The judge shall put the parties and their counsels under oath and shall remain under oath in all pre-trial conferences.

The judge with all tact, patience, impartiality, and with due regard to the rights of the parties shall endeavor to persuade them to arrive at a settlement of the dispute. The court shall initially ask the parties and their lawyers if an amicable settlement is possible. If not, the judge may confer with the parties with the opposing counsel to consider the following:

- (a) Given the evidence of the plaintiff presented in his pre-trial brief to support his claim, what manner of compromise is considered acceptable to the defendant at the present stage?
- (b) Given the evidence of the defendant described in his pre-trial brief to support his defense, what manner of compromise is considered acceptable to the plaintiff at the present stage?

If not successful, the court shall confer with the party and his counsel separately.

If the manner of compromise is not acceptable, the judge shall confer with the parties without their counsel for the same purpose of settlement. The judge shall exert best efforts to guide the parties to an amicable settlement. The court may approve the agreement between the parties based on public interest and the public policy to protect the environment and ensure sustainable development and issue a consent decree embodying said agreement. The plaintiff shall be responsible for the service of the consent decree to the affected barangays provided that the cost of the service shall be borne equally by the parties.

SEC. 5. *Failure to settle.* — If all efforts to settle fail, the trial 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) Inquire if there are cases arising out of the same facts pending before other courts and order its consolidation if warranted;
 - (c) Inquire if the pleadings are in order. If not, order the amendments if necessary;
 - (d) Inquire 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 of facts and documents. To obtain admissions, the court shall ask 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. It 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;
 - (g) Define and simplify the factual and legal issues arising from the pleadings. Uncontroverted issues and frivolous claims or defenses should be eliminated. For each factual issue, the parties/counsel shall state all the evidence to support their positions thereon. For each legal issue, parties/counsel shall state the applicable law and jurisprudence supporting their respective positions thereon. If only legal issues are presented, the judge shall require the parties to submit their respective memoranda and the court can proceed to render judgment;
 - (h) Determine the propriety of rendering a summary judgment dismissing the case based on the disclosures made at the pre-trial or a judgment based on the pleadings, evidence identified and admissions made during pre-trial;
 - (i) Ask parties to agree on the specific trial dates for continuous trial in accordance with Circular No. 1-89 dated January 19, 1989; 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. The One-Day Examination of Witness Rule, that is, a witness has to be fully examined in one (1) day only, shall be strictly adhered to subject to the courts' discretion during trial on whether or not to extend the direct and/or cross-examination for justifiable reasons. On the last hearing day allotted for each party, he is required to make his formal offer of evidence after the presentation of his last witness and the opposing party is required to

immediately interpose his objection thereto. Thereafter, the judge shall make the ruling on the offer of evidence in open court. However, the judge has the discretion to allow the offer of evidence in writing in conformity with Section 35, Rule 132.

- (j) Determine the most important witnesses to be heard and limit the number of witnesses (Most Important Witness Rule). The facts to be proven by each witness and the approximate number of hours per witness shall be fixed;
- (k) Obtain admissions based on the affidavits of witnesses and evidence attached to the pleadings or submitted during pre-trial. The affidavits shall be based on personal knowledge, shall set forth facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The affidavits shall be in question and answer form, and shall comply with the rules of admissibility of evidence;
- (l) Require the parties and/or counsel to submit to the branch clerk of court the names, addresses and contact numbers of the witnesses to be summoned by the subpoena;
- (m) Order the delegation of the reception of evidence to the branch clerk of court under Rule 30; and
- (n) Encourage referral of the case to a trial by commissioner under Rule 32 or to a mediator or arbitrator under any of the alternative modes of dispute resolution.

During the pre-trial, the judge shall be the one to ask questions on issues raised therein and all questions or comments by counsel or parties must be directed to the judge to avoid hostilities between the parties.

SEC. 6. *Effect of failure to appear at pre-trial or prosecute civil action.* – Notwithstanding any provision of the Rules of Court to the contrary, the court shall not dismiss an environmental civil action on the ground of failure of the plaintiff to appear at the pre-trial or file a pre-trial brief.

In case of the continued failure of the plaintiff to appear at the pre-trial or to prosecute the action, the court shall order the provisional substitution of the plaintiff by an intervenor, if any, who is similarly situated as the plaintiff.

SEC. 7. *Schedule of pre-trial.* — The court shall schedule the pre-trial preferably in the afternoon sessions and set as many pre-trial conferences as may be necessary within a period of two (2) months counted from date of initial pre-trial conference.

SEC. 8. *Record of pre-trial.* — All proceedings during pre-trial shall be recorded. 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.

SEC. 9. *Pre-trial order.* — The court shall issue the required pre-trial order within ten (10) days after the termination of the pre-trial. Said order shall bind the parties, limit the trial to matters not disposed of and control the course of the action during the trial.

However, the court may opt to dictate the pre-trial order in open court in the presence of the parties and their counsel and with the use of a computer, shall have the same immediately finalized and printed. Once finished, the parties and/or their counsel shall sign the same to manifest their conformity thereto.

SEC. 10. *Efforts to settle.* — The court shall endeavor to make the parties agree to an equitable compromise or settlement at any stage of the proceedings before rendition of judgment.

RULE 4

TRIAL

SEC. 1. *Continuous trial.* — The judge shall conduct continuous trial and the trial period shall not exceed three (3) months from the date of the issuance of the pre-trial order.

SEC. 2. *Affidavits in lieu of examination.* — Affidavits in lieu of direct examination are allowed, subject to cross-examination and the right to object to inadmissible portions of the affidavit.

SEC. 3. *Trial by commissioner or panel of experts.* — When issues and questions of fact require particular technical or scientific expertise or knowledge, the court may, upon motion of a party or *motu proprio*, refer the same to a commissioner or to a panel of experts. The panel shall be made up of at least three (3) individuals, one of whom shall serve as the chairman of the panel.

Each party shall nominate one individual, who must possess expertise or knowledge in the particular field in issue, to the panel of experts, subject to the approval of the court. The parties shall equally shoulder the expert's fees and expenses, half of which shall be deposited with the court before the expert renders service. In cases where the action has been exempted by the court from the payment of filing fees, the experts nominated by the parties shall be considered as “persons” acting for the state and shall not be entitled to expert’s fees.

In the absence of a suitable nominee from either of the party, the court shall require the government agency concerned to submit a list of its qualified personnel, possessing the necessary expertise or knowledge in the particular field in issue, from which the parties may select their nominees to the panel of experts. In such a case, the selected nominee shall be considered as a person acting for the state and shall not be entitled to expert’s fees.

SEC. 4. *Report of panel of experts.* — Where a panel of experts has been constituted, the report, including all exhibits, affidavits, depositions, papers and the transcript, if any, to be attached thereto, must be approved by the members of the panel.

The panel shall make under oath, a full and accurate report to the court on the matter of the subject of the order of reference, but the report shall be considered by the court in deciding the case.

The court shall fix reasonable fees in payment of the experts, subject to the approval of the parties.

The court shall conduct clarificatory hearings should it be necessary, prior to its acceptance of the report of the panel. The clarificatory hearings should not exceed two hearings within a period of fifteen (15) days from the submission of the report of the panel.

SEC. 5. *Submission of memoranda.* — The court shall require the parties to submit their respective memoranda in the form of a draft decision within a non-extendible period of thirty (30) days from the date the parties rest their case.

With or without any memoranda filed, the court shall have a period of ninety (90) days to decide the case counted from the last day of the 30-day period to file the memoranda.

SEC. 6. *Decision.* — The court shall have a period of one (1) year from the filing of the complaint to try and decide the case.

The court shall prioritize the adjudication of environmental cases.

RULE 5

JUDGMENT AND EXECUTION

SEC. 1. *Judgments not stayed by appeal.* — Judgment in environmental civil actions, except with respect to civil liability, damages, and attorney's fees shall be immediately executory pending appeal, unless enjoined by the higher court.

The posting of a bond to stay execution pending appeal is not allowed.

SEC. 2. *Continuing mandamus.* — The court may issue a writ of continuing mandamus directing the performance of a series of acts and is effective for an unlimited period of time.

After judgment, the court may convert the temporary EPO to a writ of continuing mandamus. The court shall require the violator to submit quarterly periodic reports detailing the progress of the execution of the judgment. The court may also require the concerned government agency to monitor such progress.

The writ shall terminate upon a sufficient showing that the order has been implemented to the satisfaction of the court in accordance with Section 14, Rule 39 of the Rules of Court.

SEC. 3. *Monitoring of compliance with judgment and orders of the court.* — By written consent of both parties or upon the application of either or *motu proprio*, the court may order that the carrying of a judgment or order into effect be referred to a commissioner or commissioners to be agreed upon by the parties or to be appointed by the court. The commissioner shall file with the court his report, or regular progress reports as the case may be, in writing upon the matters submitted to him by the order of reference.

The foregoing notwithstanding, the court may dispense with the reference to a commissioner and require the parties to directly submit a report, or regular progress reports as the case may be, in compliance with the judgment or order of the court.

SEC. 4. *Prohibited pleadings.* — The following pleadings, motions, or petitions shall not be allowed in the cases covered by this Rule.

- (a.) Motion to dismiss the complaint;
- (b.) Motion for a bill of particulars;
- (c.) Motion for new trial or for reopening of trial;
- (d.) Petition for relief from judgment;
- (e.) Motion for extension of time to file pleadings, affidavits or any other paper;
- (f.) Petition for certiorari, mandamus, or prohibition against any interlocutory order issued by the court;
- (g.) Motion to declare the defendant in default;
- (h.) Motions for postponement;
- (i.) Reply and rejoinder;
- (j.) Third party complaint

RULE 6

SUITS AND STRATEGIC LEGAL ACTION AGAINST PUBLIC PARTICIPATION

SEC. 1. *Suits and strategic legal action against public participation (SLAPP)*. — In a suit brought against a person who filed a citizen’s suit for the purpose of enforcing the provisions of any environmental law or its implementing rules and regulations, or against any government agency, officer, employee thereof that implements environmental laws, the court may from an examination of the allegations of the complaint and the answer, and evidence attached thereto, *motu proprio* dismiss the case. If the intent to harass, vex, exert undue pressure, or stifle such legal course is manifest from the pleadings, the court shall dismiss the complaint.

PART II

CRIMINAL PROCEDURE

RULE 7

PROSECUTION OF OFFENSES

SEC. 1. *Complaint defined*. — A complaint is a sworn written statement subscribed by the offended party (any citizen, law enforcement officer, or other public officer) charging a person with an offense filed with the office of the public prosecutor, stating therein that the same is being filed under this Rule.

If a petition for review of the resolution of the prosecutor is not resolved within sixty (60) days from the filing of the petition with the Secretary of Justice, the 60-day period of suspension of the criminal case shall automatically be lifted and the trial court shall immediately set the arraignment and pre-trial conference within fifteen (15) days from the last day of the 60-day suspension period.

SEC. 2. *Private prosecutor*. — In criminal cases where the offense charged does not involve any civil liability, the private prosecutor may be allowed to intervene and assist the public prosecutor in the prosecution of the criminal action.

SEC. 3. *Venue*. — The criminal action may be commenced in any of the following courts:

- (a) The court having jurisdiction over the place where the offense is alleged to have been committed;
- (b) The court having jurisdiction over the place where the items, equipment, paraphernalia, and instruments are seized or found.

SEC. 4. *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.

The reservation of the right to institute separately the civil action shall be made during pre-trial.

Once the case is filed, the payment of filing fees on the civil liability shall be deferred. However in case civil liability or damages are awarded, the filing fees shall constitute a first lien on the judgment award. The damages which may be awarded by the court less the filing fees shall accrue to the funds of the agency charged with the implementation of the environmental law violated. The amount so awarded shall be used for the restitution and rehabilitation of resources affected.

SEC. 5. Impleading juridical persons as defendants in the civil aspect of the criminal action. — When the accused is an officer, director, member, employee, agent, contractor or person under the supervision of or connected in any other official capacity with a person or a juridical entity, the latter, upon motion of the offended party, may be joined as a party defendant in the civil aspect of the criminal case for purposes of determining its civil liability in relation to the criminal act.

Upon approval of the motion of the offended party, the judge shall issue an order declaring that the civil liability is instituted in the criminal case and that summons together with the information be served on the aforementioned person or juridical entity. Henceforth, all pleadings filed in the criminal case shall indicate in the title the joinder of the aforesaid co-defendant referred to in the preceding paragraph and his having been impleaded as a party defendant.

SEC. 6. Officers authorized to conduct preliminary investigation. — In addition to those authorized to conduct preliminary investigation under Sec. 2 Rule 112 of the Rules of Court, lawyers deputized as special public prosecutors by the Department of Justice may conduct preliminary investigations.

RULE 8

ARREST AND SEIZURE

SEC. 1. Citizen's arrest. — Any citizen may arrest even without warrant any person who in his presence has committed, is actually committing, or is attempting to commit any violation of environmental law. He may also seize and confiscate, in favor of the Government, the items subject of the offense, and the tools and equipment used in committing the offense. He may deliver the offender and the confiscated items, tools, and equipment to the nearest police station within a reasonable time.

RULE 9

CUSTODY AND DISPOSITION OF CONFISCATED, SEIZED, AND/OR SURRENDERED ITEMS AND INSTRUMENTS

SEC. 1. *Custody and disposition of seized items.* — In case the items seized are live specimen, dangerous or hazardous substances, or are, by nature, in bulk, the applicable laws or rules promulgated by the concerned government agency shall govern the manner of their custody or disposition.

SEC. 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 team having initial custody and control of the abovementioned items, equipment, paraphernalia, and instruments after seizure and confiscation, shall physically inventory, and photograph the same in the presence of the accused or the person/s from whom such items were confiscated or seized, or his/her representative or counsel. Representative samples of the seized items shall be obtained.

Thereafter the apprehending officer shall submit the return of the search warrant, compliance report, photographs, representative samples, and other pertinent documents to the court for appropriate action.

- (b) Upon submission of the compliance report, photographs, and other pertinent documents, the court shall issue an order directing the sale, auction or disposition of the confiscated items, or provide for the custody thereof by the agency concerned.

RULE 10

PROVISIONAL REMEDIES

SEC.1. *Provisional remedies in criminal cases.* – The provisional remedies in civil actions insofar as are applicable may be availed of in criminal cases. The court shall act on the application immediately upon the filing of the petition.

SEC. 2. *Prohibition against TRO and preliminary injunction* – The court is prohibited from issuing a temporary restraining order (TRO) or injunction against government agencies enforcing environmental laws.

RULE 11

PRE-TRIAL

SEC. 1. *Setting of pre-trial conference* — After the arraignment, the court shall forthwith set the pre-trial conference within thirty (30) days from the date of arraignment, and issue an order:

- (a) Requiring the private offended party to appear thereat for purposes of plea-bargaining and for other matters requiring his presence;
- (b) Referring 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 to mark the documents or exhibits to be presented by the parties and copies thereof to be attached to the records after comparison and to consider other matters as may aid in its prompt disposition; and

- (c) In mediatable cases involving the civil aspect of the criminal case, the judge shall refer the parties and their counsel to the Philippine Mediation Center (PMC) unit for purposes of mediation if available.

SEC.2. *Preliminary conference.* — During the preliminary conference, the branch clerk of court shall assist the parties in reaching a settlement of the civil aspect of the case, mark the documents to be presented as exhibits and copies thereof attached to the records after comparison, ascertain from the parties the undisputed facts and admissions on the genuineness and due execution of documents marked as exhibits and consider such other matters as may aid in the prompt disposition of the case. The proceedings during the preliminary conference shall be recorded in the Minutes of Preliminary Conference to be signed by both parties and counsel.

The Minutes of Preliminary Conference and the exhibits shall be attached by the branch clerk of court to the case record before the pre-trial

SEC.3. *Duty of the judge.* — Before the pre-trial conference the judge must study the allegations of the information, the statements in the affidavits of witnesses, documentary evidence and other evidence which form part of the record of the preliminary investigation.

SEC. 4. *Plea-bargaining.* — During the pre-trial, the trial judge shall consider plea-bargaining arrangements. Where the prosecution and the offended party 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; and
- (c) Render and promulgate judgment of conviction, including the civil liability or damages duly established by the evidence.

SEC. 5. *Failure of plea-bargaining.* — When the plea bargaining fails, the court shall:

- (a) Adopt the minutes of 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;
- (b) Scrutinize every allegation of the information and the statements in the affidavits and other documents which form part of the record of the preliminary investigation and other documents identified and marked as exhibits in determining further admissions of facts, documents and in particular as to the following:
 - i. The court's territorial jurisdiction relative to the offense/s charged;

- ii. Qualification of expert witnesses;
- iii. Amount of damages;
- iv. Genuineness and due execution of documents; and
- v. Such other matters that would limit factual issues.

(c) Define factual and legal issues;

(d) 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 and use the time frame for each stage in setting the trial dates;

(e) 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

(f) Consider modification of order of trial if the accused admits the charge but interposes a lawful defense.

SEC. 6. *Manner of questioning.* — During the pre-trial, the judge shall be the one to ask questions on issues raised therein and all questions must be directed to him to avoid hostilities between parties.

SEC. 7. *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 of Rule 118 of the Rules of Criminal Procedure shall be approved by the court.

SEC. 8. *Record of proceedings.* — All proceedings during the pre-trial shall be recorded, the transcripts prepared and the minutes signed by the parties and/or their counsels.

SEC. 9. *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. Said order shall bind the parties, limit the trial to matters not disposed of and control the course of action during the trial.

RULE 12

TRIAL

SEC. 1. *Continuous trial.* — The court shall endeavor to conduct continuous trial and the trial period shall not exceed three (3) months from the date of the issuance of the pre-trial order.

SEC. 2. *Affidavits in lieu of examination.* — Affidavits in lieu of direct examination are allowed, subject to cross-examination and the right to object to inadmissible portions of the affidavit.

SEC. 3. *Submission of memoranda.* — The court shall require the parties to submit their respective memoranda in the form of a draft decision within a non-extendible period of thirty (30) days from the date the parties rest their case.

With or without any memoranda filed, the court shall have a period of ninety (90) days to decide the case counted from the last day of the 30-day period to file the memoranda.

SEC. 4. *Disposition period.* — The court shall have a period of ten (10) months from the date of the arrest or the voluntary surrender of the accused to dispose of the case.

SEC.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 (IBP) to provide *pro bono* lawyers for the accused.

PART III

EVIDENCE

RULE 13

BURDEN OF PROOF AND PRESUMPTIONS

SEC. 1. *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

- (a) Discovery of any person in an area where he has no permit or registration papers for a fishing vessel shall constitute a *prima facie* evidence that the person or vessel is engaged in unauthorized fishing.
- (b) The entry of any foreign fishing vessel in Philippine waters shall constitute a *prima facie* evidence that the vessel is engaged in fishing in Philippine waters.
- (c) The discovery of dynamite, other explosives and chemical compounds which contain combustible elements, or noxious or poisonous substances, or equipment or device for electro-fishing in any fishing vessel or in the possession of any fisherfolk, operator, fishing boat official or fishworker shall constitute *prima facie* evidence, that the same was used for fishing in violation of the Philippine Fisheries Code of 1998.
- (d) The discovery in any fishing vessel of fish caught or killed with the use of explosive, noxious or poisonous substances or by electricity shall

constitute *prima facie* evidence that the fisherfolk, operator, boat official or fishworker is fishing with the use thereof.

- (e) All those apprehended on-site for direct or indirect participation in the commission of the offense(s) cited had full knowledge of and willingly participated therein.
- (f) The registered owner, operator, or driver of a conveyance used in the commission of the offense had full knowledge and willingly participated therein by providing the conveyance for the illegal purpose to which said conveyance was applied. In case the registered owner of the conveyance is a partnership or corporation, the partners or officers thereof had full knowledge of and granted authorization or issued instructions for the use or application of the conveyance in the commission of the offense.
- (g) Any forest products without the requisite authorization or permit, or with incomplete required supporting documents, or with genuine authorizations or permits or supporting documentation that have an expired validity, have been cancelled or that contain forged entries, or with spurious authorizations, permits or supporting documentation, were obtained from an illegal source.
- (h) The absence of an ore transport permit shall be considered as *prima facie* evidence of illegal mining.

RULE 14

DOCUMENTARY EVIDENCE

SEC. 1. *Photographic, video and similar evidence.* — Photographs, videos and similar evidence of events, acts, transactions or of wildlife, wildlife by-products or derivatives, forest products or mineral resources subject of a case shall be admissible provided it is shown, presented or displayed to the court before or during trial. The photograph, video, or other similar evidence shall be identified and 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.

SEC. 2. *Inventory sheets, apprehension, confiscation or seizure receipts, scaling reports and similar certifications, records and reports from the proper government agencies.* — 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 15

INSPECTION FOR EVIDENCE

SEC. 1. *Inspection of documents, lands, and property.* — Upon motion of the plaintiff in an environmental case, the court may:

- (a) Order the defendant or accused, or his officer or managing agent, to produce and permit the inspection and copying or photographing, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody or control.
- (b) Order the defendant or accused, or his officer or managing agent, to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, sampling or photographing the land or property or any designated relevant object found, or operation and activity undertaken, thereon.

FINAL PROVISIONS

RULE 16

SUITS AND STRATEGIC LEGAL ACTION AGAINST PUBLIC PARTICIPATION

SEC. 1. *Suits and strategic legal action against public participation (SLAPP).* — Where a criminal complaint is brought against a person who filed a citizen's suit or against any employee, official, officer, or government agency that implements environmental laws, the public prosecutor shall immediately make a determination based on the criminal complaint and counter-affidavit of the respondent whether said legal action has been filed to harass, vex, or exert undue pressure or stifle such legal recourses of the person complaining of or enforcing environmental laws. After consideration of the pleadings, the public prosecutor shall dismiss the criminal complaint if found to be a SLAPP and devoid of merit.

The public prosecutor shall give priority to the resolution of the SLAPP.

SEC. 2. *Effectivity clause.* — This Rule shall take effect on _____, 2009 following their publication in two newspapers of general circulation in the Philippines.