

[1988 RULES ON CRIMINAL PROCEDURE, July 07, 1988]

1985 RULES ON CRIMINAL PROCEDURE

(RULES 110-127, RULES OF COURT)
AS AMENDED PER RESOLUTION ADOPTED ON JUNE 17, 1988 AND
JULY 7, 1988.

Rule 110 Prosecution of Offenses

SECTION 1. *How instituted.*— For offenses not subject to the rule on summary procedure in special cases, the institution of criminal actions shall be as follows:

(a) For offenses falling under the jurisdiction of the Regional Trial Courts, by filing the complaint with the appropriate officer for the purpose of conducting the requisite preliminary investigation therein;

(b) For offenses falling under the jurisdiction of the Municipal Trial Courts and Municipal Circuit Trial Courts, by filing the complaint with the fiscal's office. However, in Metropolitan Manila and other chartered cities, the complaint may be filed only with the office of the fiscal.

In all cases, such institution shall interrupt the period of prescription of the offenses charged. (n)

SEC. 2. *The complaint or information* — The complaint or information shall be in writing in the name of the People of Philippines against all persons who appear to be responsible for the offense involved. (1a)

SEC. 3. *Complaint defined.*—Complaint a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer or the public officer charged with the enforcement of the law violated. (2a)

SEC. 4 *Information defined.*—An information is an accusation in writing charging a person with an offense subscribed by the fiscal and filed with the court. (3)

SEC. 5. *Who must prosecute criminal actions.*— All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal. However, in the Municipal Trial Courts or Municipal Circuit Trial Courts when there is no fiscal available, the offended party, any peace officer or public officer charged with the enforcement of the law violated may prosecute the case. This authority ceases upon actual intervention of the fiscal or upon elevation of the case to the Regional Trial Court. The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse. The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor, in any case, if the offended party has consented to the offense or pardoned the offender. The offenses of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents, grand-parents, or guardian, nor, in any case, if the

offender has been expressly pardoned the above-named persons, as the case may be. In case the offended party dies becomes incapacitated before she could file the complaint and has no known parents, grandparents or guardian, the State shall initiate the criminal action in her behalf. The offended party, even if she were a minor, has the right to initiate the prosecution for the above offenses, independently of her parents, grandparents or guardian unless she is incompetent or incapable of doing so upon grounds other than her minority Where the offended party who is a minor fails to file the complaint, her parents, grandparents, or guardian may file the same. The right to file the action granted to the parents, grandparents or guardian shall be exclusive of all other persons and shall be exercised successively in the order herein provided, except as stated in the immediately preceding paragraph. No criminal action for defamation which consists in the imputation of an offense mentioned above, shall be brought except at the instance of and upon complaint filed the offended party. (4a)

SEC. 6. Sufficiency of complaint or information — A complaint or information is sufficient if it states the name of the accused; the designation of the offense by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. When an offense is committed by more than one person, all of them shall be included in the complaint or information. (5a)

SEC. 7. Name of accused,—A complaint or information must state the name and surname of the accused or any appellation or nickname by which he has been or is known, or if his name cannot be discovered he must be described under a fictitious name with a statement that his true name is unknown. If in the course of the proceeding the true name of the accused is disclosed by him, or appears in some other manner to the court, the true name of the accused shall be inserted in the complaint or information and record. (6a)

SEC. 8. Designation of the offense.— Whenever possible, a complaint or information should state the designation given to the offense by the statute, besides the statement of the acts or omissions constituting the same, and if there is no such designation, reference should be made to the section or subsection of the statute punishing it. (7)

SEC 9. Cause of accusation.—The acts or omissions complained of as constituting the offense must be stated in ordinary and concise language without repetition, not necessarily in the terms of the statute defining the offense, but in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court pronounce proper judgment. (8)

SEC. 10. Place of the commission of the offense.—The complaint or information is sufficient if it can be understood therefrom that the offense was committed or some of the essential ingredients thereof occurred at some place within the jurisdiction of the court, unless the particular place wherein it was committed constitutes an essential element of the offense or is necessary for identifying the offense charged. (9)

SEC. 11. Time of the commission of the offense.—It is not necessary to state in the complaint or information the precise time at which the offense was committed except when time is a material ingredient of the offense, but the act may be alleged

to have been committed at any time as near to the actual date at which the offense was committed as the information or complaint will permit. (10)

SEC. 12. *Name of the offended party.*— A complaint or information must state the name and surname of the person against whom or against whose property the offense was committed, or any appellation or nickname by which such person has been or is known, and if there is no better way of identifying him, he must be described under a fictitious name. (a) In case of offenses against property, if the name of the offended party is unknown, the property, subject matter of the offense, must be described with such particularity as to properly identify the particular offense charged. (b) If in the course of the trial the true name of the person against whom or against whose property the offense was committed is disclosed or ascertained, the court must cause the true name to be inserted in the complaint or information. (c) If the offended party is a corporation or any other juridical person, it is sufficient to state the name of such corporation or juridical person, or any name or designation by which it has been or is known, or by which it may be identified, without necessity of averring that it is a corporation, or that it is organized in accordance with law. (11)

SEC. 13. *Duplicity of offense.*—A complaint or information must charge but one offense, except only in those cases in which existing laws prescribe a single punishment for various offenses. (12)

SEC. 14. *Amendment.*—The information or complaint may be amended; in substance or form, without leave of court, at any time before the accused pleads; and thereafter and during the trial as to all matter of form, by leave and at the discretion of the court, when the same can be done without prejudice to the rights of the accused. If it appears at any time before judgment that a mistake has been made in charging, the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with Rule 119, Section 11, provided the accused would not be placed thereby in double jeopardy, and may also require the witnesses to give bail for appearance at the trial. (13a)

SEC. 15. *Place where action is to be instituted.*— (a) Subject to existing laws, in criminal prosecutions the action shall be instituted and tried in the court of the municipality or territory wherein the offense was committed or any one of the essential ingredients thereof took place. (b) Where an offense is committed on a railroad train, in an aircraft, or in an other public or private vehicle while the course of its trip, the criminal action may be instituted and tried in the court of any municipality or territory where such train, aircraft or other vehicle passed during such trip, including the place of departure and arrival. (c) Where an offense is committed on board a vessel in the course of its voyage, the criminal action may be instituted and tried in the proper court of the first port of entry or of any municipality or territory through which the vessel passed during sue voyage subject to the generally accepted principles of international law. (d) Other crimes committed outside of the Philippines but punishable therein under Article 2 of the Revised Penal Code shall be cognizable by the proper court in which the charge is first filed. (14a)

SEC. 16. *Intervention of the offended parity in criminal action.*—Unless the offended party has waived the civil action or expressly reserved the right to institute it separately from the criminal action, and subject to the provision of

Section 5 hereof, he may intervene by counsel in the prosecution of the offense. (15a)

RULE 111
Prosecution of Civil Action

SECTION 1. *Institution of criminal and civil actions.* — When a criminal action is instituted, the civil action for the recovery of civil liability is impliedly instituted with the criminal action, unless the offended party waives the civil action, reserves his right to institute it separately, or institutes the civil action prior to the criminal action. Such civil action includes recovery of indemnity under the Revised Penal Code, and damages under Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines arising from the same act or omission of the accused. A waiver of any of the civil actions extinguishes the others. The institution of, or the reservation of the right to file, any of said civil actions separately waives the others. The reservation of the right to institute the separate civil actions shall be made before the prosecution starts to present its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation. In no case may the offended party recover damages twice for the same act or omission of the accused. When the offended party seeks to enforce civil liability against the accused by way of moral, nominal, temperate or exemplary damages, the filing fees for such civil action as provided in these Rules shall constitute a first lien on the judgment except in an award for actual damages. In cases wherein the amount of damages, other than actual, is alleged in the complaint or information, the corresponding filing fees shall be paid by the offended party upon the filing thereof in court for trial, (1a)

SEC. 2. *Institution of separate civil action.* — Except in the cases provided for in Section 3 hereof, after the criminal action has been commenced, the civil action which has been reserved cannot be instituted until final judgment has been rendered in the criminal action. (a) Whenever the offended party shall have instituted the civil action as provided for in the first paragraph of Section 1 hereof before the filing of the criminal action and the criminal action is subsequently commenced, the pending civil action shall be suspended, in whatever stage before final judgment it may be found, until final judgment in the criminal action has been rendered. However, if no final judgment has been rendered by the trial court in the civil action, the same may be consolidated with the criminal action upon application with the court trying the criminal action. If the application is granted, the evidence presented and admitted in the civil action shall be deemed automatically reproduced in the criminal action, without prejudice to the admission of additional evidence that any party may wish to present. In case of consolidation, both the criminal and the civil actions shall be tried and decided jointly. (b) Extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist. (3a)

SEC. 3. *When civil action may proceed independently.* — In the cases provided for in Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines, the independent civil action which has been reserved may be brought by the offended party, shall proceed independently of the criminal action, and shall require only a preponderance of evidence. (2a)

SEC. 4. Judgment in civil action not a bar.—A final judgment rendered in a civil action absolving the defendant from civil liability is no bar to a criminal action. (4)

SEC. 5. Elements of prejudicial question. — The two (2) essential elements of a prejudicial question are: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue determines whether or not the criminal action may proceed, (n)

SEC. 6. Suspension by reason of prejudicial question.—A petition for suspension of the criminal action based upon the pendency of a prejudicial question in a civil action may be filed in the office of the fiscal or the court conducting the preliminary investigation. When the criminal action has been filed in court for trial, the petition to suspend shall be filed in the same criminal action at any time before the prosecution rests. (5a)

RULE 112

Preliminary Investigation

SECTION 1. Definition.—Preliminary investigation is an inquiry or proceeding for the purpose of determining whether there is sufficient ground to engender a well founded belief that a crime cognizable by the Regional Trial Court has been committed and that the respondent is probably guilty thereof, and should be held for trial, (1a)

SEC. 2. Officers authorized to conduct preliminary investigation.— The following may conduct a preliminary investigation:

- (a) Provincial or city fiscals and their assistants;
- (b) Judges of the Municipal Trial Courts and Municipal Circuit Trial Courts;
- (c) National and Regional state prosecutors; and
- (d) Such other officers as may be authorized by law.

Their authority to conduct preliminary investigation shall include all crimes cognizable by the proper court in their respective territorial jurisdictions. (2a)

SEC. 3. Procedure.—Except as provide for in Section 7 hereof, no complaint information for an offense cognizable" the Regional Trial Court shall be filed with out a preliminary investigation having been first conducted in the following manner:

(a) The complaint shall state the known n address of the respondent and be accompanied by affidavits of the complainant his witnesses as well as other supporting documents, in such number of copies there are respondents, plus two (2) copies for the official file. The said affidavits be sworn to before any fiscal, state prosecutor or government official authorized administer oath, or, in their absence unavailability, a notary public, who must certify that he personality, examined affiants and that he is satisfied that voluntarily executed and understood affidavits.

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss the same if he finds, no ground to continue with the inquiry or issue a subpoena to the respondent, attaching thereto a copy of the complaint, affidavits, and other supporting documents. Within ten (10) days from receipt thereof, the respondent shall submit counter-affidavits and other supporting documents. He shall have the right to examine all other evidence submitted by the complainant. Such counter-affidavits and other supporting evidence submitted by the respondent shall also be sworn to and certified as prescribed in paragraph (a)