

FUNDAMENTALS OF DECISION WRITING FOR JUDGES

CHAPTER ONE

INTRODUCTION

A recent poll conducted by the Philippine Judicial Academy (PHILJA) among judges throughout the country has confirmed the general impression that they regard writing decisions as a major challenge to their learning and competence. While that finding does not appear earth-shaking, it has serious implications for the administration of justice in the country. With a backlog of more than 800,000 cases clogging the dockets of the more than 2,000 first- and second-level courts in the thirteen judicial regions, it is reasonably safe to conclude that a contributory cause for the delay in the resolution of cases is the inability of many of our judges to draft and promulgate their decisions fast enough in consonance with the Rules and statutory requirements. Clearly, there is an urgent need to improve the proficiency of our judges in judicial writing. We are comforted, however, by the realization that this will be an enjoyable chore since our judges are men and women of high intellectual achievement with considerable experience in the law who are committed to the ends of justice.

It is the purpose of this instructional handbook to introduce the nation's magistrates, especially the newly appointed judges, to the "fundamentals" of writing their decisions and orders as accurately, briefly, and clearly – the ABCs of good judicial writing – as humanly possible given the constraints of time, facilities, and resources.

While our judges are generally on their own in matters of style, form, and substance, it is in the exposition of the established facts and applicable law that normally presents some difficulty in organizing the so-called "architecture" of arguments and counter-arguments where a welter of procedural and evidentiary problems may come to the fore in determining the length of a decision. Longer is not necessarily better. It is interesting to note that the *very first decision* of our Supreme Court – *In re Aguas* (1 Phil . 1) – is all of one page!

The guidelines and suggested techniques that follow have all been sourced from published and unpublished materials prepared by well-known authorities on decision writing, most of whom are justices and judges themselves. We hereby duly acknowledge and express our appreciation for their contributions in the development and production of this instructional handbook, *Fundamentals of Decision Writing for Judges*. We are hopeful that it will serve them well and, by extension, the preservation of law and order in our land through well-thought out and equally well-written decisions.

CHAPTER TWO

CONSTITUTIONAL STANDARDS AND THE RULES OF COURT

It goes without saying that every decision, order, or opinion of the Court should be, at the very least, in conformity with what the Constitution and the Rules of Court require as minimum standards for the parties and litigants to recognize as valid and binding in the adjudication of their rights and obligations.

A. Elements of the Standards

1. Theory/Definition of Facts

A decision must state the essential ultimate facts upon which the court's conclusion is drawn. A court of justice is not hidebound to write in its decision every bit and piece of evidence presented by one party and the other upon the issues raised. Neither is it to be burdened with the obligation to specify in the verdict or sentence the facts which a party considered as proved. This is but a part of the mental process from which the court draws essential facts.

a. Finding of Fact

Finding of fact is the written statement of the ultimate facts as found by the court and essential to support the decision and judgment rendered thereon.

- i. A decision falls short of the constitutional standard when it tends to generalize and to form conclusions without detailing the facts from which such conclusions are deduced or derived.
- ii. Selective finding of fact is allowed because it is for the judge to determine from the narration of facts, relevant or irrelevant, and the assertions by the parties, truthful or not, what actually happened in the case before him.
- iii. There is no proscription against the court's adoption of the narration of facts made in the briefs or memoranda of the parties, instead of rewriting the same in its own words, for as long as it makes an assessment of the evidence presented before it.
- iv. The fact that the case law supporting it is not cited does not make the decision any less valid since it is implicit in the appreciation of the evidence that discussion is made in the context of the law.

B. The Law

1. Constitutional Framework^[1]

The form and content of a Decision is provided for in the Constitution, Article 8, Section 14, to *wit*:

SEC. 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

As explained by Justice Isagani A. Cruz:

Except for the second paragraph, which was introduced only in the present charter, Section 14 has been in force since the Constitution of 1935. The provision was recast in affirmative terms in the 1973 Constitution, but has been

virtually restored to the original form in the Constitution of 1987, to apply to all courts, including the municipal courts. The purpose has always been the same, viz., to inform the person reading the decision, and especially the parties, of how it was reached by the court after consideration of the pertinent facts and examination of the applicable laws.^[2]

2. Legal Requirements under the Rules of Court

Rule 36, Section 1 of the 1997 Rules on Civil Procedure provides:

SEC. 1. **Rendition of Judgments.** – A judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of court.

Rule 120, Sections 1-3 of the 2000 Revised Rules of Criminal Procedure states:

SEC. 1. **Judgment; definition and form.** – Judgment is the adjudication by the court that the accused is guilty or not guilty of the offense charged and the imposition on him of the proper penalty and civil liability, if any. It must be written in the official language, personally and directly prepared by the judge and signed by him, and shall contain clearly and distinctly a statement of the facts and the law upon which it is based.

SEC. 2. **Contents of the judgment.** – If the judgment is of conviction, it shall state (1) the legal qualification of the offense constituted by the acts committed by the accused and the aggravating or mitigating circumstances which attended its commission; (2) the participation of the accused in the offense, whether as principal, accomplice, or accessory after the fact; (3) the penalty imposed upon the accused; and (4) the civil liability or damages caused by his wrongful act or omission to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate civil action has been reserved or waived.

In case the judgment is of acquittal, it shall state whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist.

SEC. 3. **Judgment for two or more offenses.** – When two or more offenses are charged in a single complaint or information, but the accused fails to object to it before trial, the court may convict him of as many offenses as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense.

It is to be emphasized that the requirement of a clear statement of fact and law has reference to a decision rendered after previous presentation of proof in an ordinary civil or criminal case. It does not apply to orders resolving incidental matters.^[3]

CHAPTER THREE

DEFINITION OF TERMS

In dealing with the basic concepts of the law so that their application to specific factual situations is appreciated in its appropriate context, it is helpful to enumerate early on a number of legal terms which figure prominently in judicial writing. A common understanding of such terms is essential to communicating their significance in disposing of cases and controversies which are brought before the courts.

A Quo

A reference to the previous court from where a case or matter originated. Thus, the term "*court a quo*" in appealed cases refers to a lower court whose decision is under review.

Acquittal

A judgment by a court that the accused is found not guilty of the crime imputed to him and is, therefore, absolved from prosecution for that crime.

Act of State

A sovereign act of government which cannot be the subject of a suit or be actionable in law.

Action in Personam

A suit directed against specific persons and which seeks personal judgments.

Action in Rem

A suit directed against the thing or property or status of a person and which seeks a judgment with respect thereto as against the whole world.

Actionable

A matter or action that creates a ground for a "cause of action" or a suit at law.

Actual Case or Controversy

A conflict involving opposite legal claims susceptible of judicial resolution, one that is "definite and concrete, touching the legal relations of parties having diverse legal interests," constituting a real and substantial controversy admitting of specific relief.

Ad Litem

A Latin term which means "just for a particular action." Thus, a guardian *ad litem* is a guardian appointed to represent a minor or incompetent just for that specified proceeding.

Adjudicate

The act of a judge in rendering judgment, or making a decision between two opposed or competing claims, or upholding or denying a cause of action.

Admission

In the law of evidence, it refers to a statement, oral or written, made by a party about the existence of a relevant fact which can be taken against him that is material in a court proceeding.

Adverse Party

It usually refers to a party litigant in a case who would be adversely affected by the court's decision.

Affidavit

An *ex parte* statement in writing made under oath before a notary public or other officer authorized to administer oaths, about facts which the affiant either knows of his own personal knowledge or is aware of to the best of his knowledge.

Affidavit of Desistance

A sworn statement, executed by the complainant in a criminal or administrative case, that he or she is discontinuing or disavowing his complaint for whatever reason he or she may cite.

Affirmative Defense

An allegation of new matter which, while hypothetically admitting the material allegations in the pleading of the claimant, would nevertheless prevent or bar recovery by him.

Alias Writ

A writ issued by a court to replace one that was previously issued or failed to be enforced.

Allegata et Probata

The Latin expression of a doctrine in criminal law which states that what is alleged in the information or complaint must be proven during trial; otherwise, the allegation cannot be used against the accused.

Alternative Dispute Resolution

ADR for short, it refers to the procedure used to resolve a dispute or controversy, other than by adjudication of a presiding judge of a court or an officer of a government agency in which a neutral third party participates to assist in the resolution of issues. The term includes arbitration, mediation, conciliation, early neutral evaluation, mini-trial, or any combination thereof.

Amicus Curiae

A "friend of the court" whose legal learning or expertise is judicially sought to advise on matters of which a judge may be doubtful or in need of special assistance.

Answer

The pleading in which a defendant sets forth his defenses against the complaint which must be filed within 15 days after service of summons.

Appeal

The remedial procedure by which an aggrieved party elevates the decision of a lower court to a higher court for review and reconsideration with a view to having it reversed or modified.

Appeal by Certiorari

An appeal to the Supreme Court where, generally, only questions of law are raised or involved. Note that the review by the Supreme Court is not a matter of right but of sound judicial discretion.

Appearance

A judicial term to denote a party's or a counsel's voluntary submission to a court's jurisdiction.

Appellant

The party in a case who appeals a lower court's decision to a higher court.

Appellee

The prevailing party in a case against whom a decision is appealed to a higher court.

Arraignment

A formal procedure in criminal prosecution "to afford an accused due process" by means of informing him of the nature and cause of the accusation against him before he is required to enter his plea of guilty or not guilty.

Assignment of Errors

A recitation of specific errors claimed to have been committed by the lower court to enable the appellate court and the opposing party to determine as to what points the appellant intends to ask for a reversal of judgment.

Attachment

A provisional remedy by which the property of an adverse party is taken into legal custody, either at the commencement of an action or at any time thereafter, as a security for the satisfaction of any judgment that may be recovered by the plaintiff.

Best Evidence Rule

The rule that the original document itself is the best evidence of what it contains. It is only when the original document cannot be produced that a secondary or other evidence of its contents may be adduced.

Burden of Evidence

The onus that a party must carry to overcome the weight of the evidence which has tilted against him. Thus, it may shift back and forth during the course of the trial depending on who is better able to sustain a *prima facie* case in his favor.

Burden of Proof

The duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.

Capacity to Act

The power to do acts with legal effect, such as entering into contracts or suing in court, usually associated with a person who is at least 18 years old.

Case at Bar

The case that is currently the subject of a particular trial or judicial proceeding.

Case at Bench

The case being heard before an appellate court.

Chose in Action

The instrument evidencing the right to sue for money or property, such as a promissory note. A legal claim or cause of action that can translate into a lawsuit.

Circumstantial Evidence

Evidence which indirectly proves a fact in issue through an inference which the fact-finder draws from the evidence established. It constitutes the combination of circumstances that is sufficient to overcome the presumption of innocence in criminal cases that can lead to conviction beyond reasonable doubt.

Civil Action

A suit filed by one party against another for the enforcement or protection of a right, or the prevention or redress of a wrong.

Civil Contempt

Contempt of court that is committed by a party who fails or neglects to do something ordered by the court or a judge for the benefit of the opposing party.

Civil Liability

This term generally refers to the satisfaction of the claims arising out of a criminal act which consists of restitution, reparation, and indemnification for consequential damages.

Civil Obligation

An obligation that gives a right of action to compel performance, as opposed to a natural obligation.

Class Suit

An action filed on behalf of many persons so numerous that it is impracticable to join them all as parties, brought by a representative number of them who sue for the benefit of all concerning a controversy that is one of common or general interest to them all. It is also called a "representative suit."

Clean Hands Doctrine

A legal principle grounded on equity which states that a complainant or plaintiff seeking relief in the courts must not himself be guilty in the matter subject of his claim.

Complaint

Generally, it is the pleading which alleges the plaintiff's cause of action. In criminal law, it refers to the sworn written statement charging a person with an offense.

Conclusive Presumption

An assertion of a fact that is deemed to be true without the need of further proof.

Confession and Avoidance

An answer or a pleading filed by a party who, while admitting the allegations against him, either expressly or by implication, asserts matters or facts which render the "confession" ineffective, excusable, inadmissible, or void.

Consent Judgment

A compromise agreement between the parties to end further litigation by having a court of competent jurisdiction approve the compromise as having the same force and effect as a judgment by the court. Thus, once approved, it has the force of *res judicata* with respect to the contentious issues in the case.

Contempt of Court

It is a defiance of the authority, justice or dignity of the court – such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with, or prejudice parties-litigants or their witnesses during litigation. It signifies not only a willful disregard or disobedience to the court's order but such conduct which tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the administration of justice.

Costs of Suit

In law, they comprise the fees and indemnities in the course of judicial proceedings, whether fixed or unalterable amounts previously determined by law or regulations in force, including those amounts which are not subject to schedule.

Court-Annexed Mediation

Any mediation process conducted under the auspices of the court, after such court has acquired jurisdiction of the dispute.

Court-referred Mediation

A process where the parties to a pending case are directed by the court to submit their dispute to a neutral third party, called the mediator, who works with them to reach a settlement of their controversy resulting in a compromise agreement on the basis of which the court will render judgment.

Criminal Action

A proceeding in court by which the State prosecutes a person for an act or omission punishable by law.

Criminal Contempt

Contempt of court that consists of conduct directed against the authority and dignity of a court or a judge, as in unlawfully assailing or discrediting the authority and dignity of a court or a judge or in doing a forbidden act.

Criminal Liability

The liability incurred by a person who commits a felony even if the wrongful act done is different from what is intended; or when he performs an act which would be an offense against persons or property, were it not for the inherent impossibility of its accomplishment or on account of the employment of inadequate or ineffectual means.

Culpa Aquiliana

Civil liability arising from fault or negligence which usually results from the commission of a tortious act or *quasi-delict*.

Culpa Contractual

Civil liability resulting from fault or negligence in the performance of a contractual obligation.

Custodia Legis

A Latin phrase which means "in the custody of the law," that is, in the lawful and physical possession of a court or public officer in obedience to a judicial or administrative order.

Decision

The adjudication or settlement of a controversy by a court of law. It goes into the roots of the controversy, makes a searching examination of the facts and issues of the case, applies the law and considers the evidence presented, and finally determines the rights of the parties.

Declaratory Relief

A special civil action brought by a person interested under a deed, will, contract, or other written instrument, whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation for the purpose of determining any question of construction or validity arising, and for a declaration of his rights and duties thereunder, before any breach or violation thereof occurs.

Default

The failure of a defending party to file his answer within the time allowed under the Rules of Court. Such failure will make him lose his standing in court, that is, he cannot appear therein, adduce evidence and be heard, nor take part in the trial or hearing of the case.

Dispositive Portion