

FAMILY COURTS AND NEGOTIATED JUSTICE

Elizabeth AGUILING-PANGALANGAN

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I. INTRODUCTION

Through the ages the Filipino family has provided the groundwork for social order. Traditional Filipino family members are dependent on each other for moral, psychological and financial support but as family relations grow, it becomes increasingly difficult and unwieldy to define these relationships and the extent of the responsibilities of each member. Yet, in the Philippines the family remains the repository of the highest values society can achieve. Thus, government is interested in preserving and promoting the family as the “foundation of the nation” and undertakes to “strengthen its solidarity and actively promote its total development”.¹

The State explicitly recognizes the “sanctity of family life” and vows to “protect and strengthen the family as a basic autonomous social institution”.² It should be noted that although the Constitution does not circumscribe the family to a “legitimate” one, Art XV, Sec 2³ defines marriage,

¹ Const. Article II, Sec 12. “The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution”, and article XV. Sec. 1. “The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development”.

² Const. Article II, Sec. 12.

³ Const. Sec. 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

“an inviolable social institution” which in turn is the “foundation of the family”. Thus, the Family Code of the Philippines passed into law in August 4, 1988, deals primarily with laws on marriage, rights and duties between the spouses, property regimes in marriages, and rights and duties of parents and their legitimate children.

Suits among family members make people outside the family uncomfortable and confused since they turn on matters that are by their very nature private, if not intimate. Constitutional provisions on the “autonomy” of the family and the “sanctity” of family life intensify the belief that the community, including law enforcers and even the courts should allow parties to solve their problems within the privacy of their homes. How far untrammelled family privacy should be and when courts may then intrude into misunderstandings within the family continue to perplex Philippine society.

II. JURISDICTION AND ORGANIZATION OF COURTS

Special courts have jurisdiction over family cases in the Philippines. Family Courts were established in every province and city in 1997 by virtue of Republic Act 8369. Section 3 of this Act states that “in case where the city is the capital of the province, the Family Court shall be established in the municipality which has the highest population”.

To date, the country is still in the transition stage in the implementation of the law. As provided for in Section 17, the Supreme Court designates some branches of the Regional Trial Court as Family Courts. Since Regional Trial Courts are courts of general jurisdiction, family law cases are decided together with other cases including heinous crimes. However, such additional cases can not be heard on the same day family cases are heard.

There are no special divisions within the ordinary courts. The only way the Court is specialized is with the designation of qualified, trained, and accredited social workers of the local government units to handle juvenile and family cases filed in the designated Regional Trial Court of that place.⁴ This is an tacit recognition that since the judges do not have the requisite preparation and training in dealing with family law cases, they will have to

⁴ Sec. 11.

rely on the lead, if not the judgment, of another party in the person of the social worker. What compounds this curious situation is that, although family and criminal cases are not heard on the same day, judges who have been deciding mostly criminal cases carry a demeanor and mindset onto the next day even when special proceedings for adoption are heard, treating the petitioners as though they were offenders.

It is thus crucial that there be Family Courts which exercise exclusive original jurisdiction⁵ to hear and decide the following cases:

- a) Criminal cases where one or more of the accused is below eighteen (18) years of age but not less than nine (9) years of age, or where one or more of the victims is a minor at the time of the commission of the offense: Provided, That if the minor is found guilty, the court shall promulgate sentence and ascertain any civil liability which the accused may have incurred. The sentence, however, shall be suspended without need of application pursuant to Presidential Decree No. 603, otherwise known as the “Child and Youth Welfare Code”;
- b) Petitions for guardianship, custody of children, *habeas corpus* in relation to the latter;
- c) Petitions for adoption of children and the revocation thereof;
- d) Complaints for annulment of marriage, declaration of nullity of marriage and those relating to marital status and property relations of husband and wife or those living together under different status and agreements, and petitions for dissolution of conjugal partnership of gains;
- e) Petitions for support and/or acknowledgment;
- f) Summary judicial proceedings brought under the provisions of Executive Order No. 209, otherwise known as the “Family Code of the Philippines”;
- g) Petitions for declaration of status of children as abandoned, dependent or neglected children, petitions for voluntary or involuntary commitment of children; the suspension, termination, or restoration of parental authority and other cases cognizable under Presidential Decree No. 603, Executive Order No. 56 (Series of 1986), and other related laws;

⁵ Sec. 5.

- h) Petitions for the constitution of the family home;
- i) Cases against minors cognizable under the Dangerous Drugs Act, as amended;
- j) Violations of Republic Act num. 7610, otherwise known as the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act”, as amended by Republic Act num. 7658; and
- k) Cases of domestic violence against:
 - 1) Women, which are acts of gender based violence that results, or are likely to result in physical, sexual or psychological harm or suffering to women; and other forms of physical abuse such as battering or threats and coercion which violate a woman’s personhood, integrity and freedom of movement; and
 - 2) Children, which include the commission of all forms of abuse, neglect, cruelty, exploitation, violence, and discrimination and all other conditions prejudicial to their development.

1. *The Actors*

A. *Judges*

Where there are Family Courts, judges are considered specialists. Aside from the requirement in Sec.4 of the Act, which amended Section 15 of Batas Pambansa 129, that a judge must be “a natural-born citizen of the Philippines, at least thirty-five (35) years of age, and, for at least ten (10) years, has been engaged in the practice of law in the Philippines or has held a public office in the Philippines requiring admission to the practice of law as an indispensable requisite”, the law requires that family court judges undergo training and have the experience and demonstrated ability in dealing with child and family cases. The Supreme Court provides a continuing education program on child and family laws, procedure and other related disciplines to judges and personnel of such courts.

The judge plays an active and conciliatory role in the proceedings. In legal separation cases “no legal separation may be decreed unless the Court has taken steps toward the reconciliation of the spouses and is fully satisfied, despite such efforts, that reconciliation is highly improbable”.⁶ In

⁶ Family Code, article 59.

proceedings involving minors, the judge has to contemplate the welfare of the child. The “best interest of the child” standard in international and domestic laws require of the judge to consider the child’s best interest as “the paramount consideration in all actions concerning him”.⁷ Confidentiality of records in proceedings involving children must also be observed. The judge should ascertain that the right of the juvenile to privacy shall be protected at all times. All measures necessary to promote his right shall be taken, including the exclusion of the public including the media from the proceedings.⁸ It is the judge who determines, *motu proprio* or after application of the prosecutor, counsel or guardian if the testimony of a child should be taken outside of the courtroom and instead be televised to the courtroom by live-link television.⁹

B. Prosecutors

The public prosecutor is present and indispensable in cases of annulment, declaration of nullity and legal separation. Section 8 (3) of the Supreme Court Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages¹⁰ provides: “where no answer is filed or if the answer does not tender an issue, the court shall order the public prosecutor to investigate whether collusion exists between the parties”.

Section 9 of the same Rule makes it a duty of the prosecutor to submit within one month after receipt of the court order a report to the court stating whether the parties are in collusion and serve copies thereof on the parties and their respective counsels. If the public prosecutor finds that collusion exists, he shall report this finding. The court then sets the report for hearing and dismisses the petition if convinced that the parties are in collusion. On the other hand, if the public prosecutor reports that there is no collusion, the court sets the case for pre-trial where the public prosecutor must likewise appear for the State.

These procedural rules carry out the substantive provision of law in the Family Code, which provides that:

⁷ See also Rule on Commitment of Children, Sec. 2. Effective April 15, 2002.

⁸ Rule on Examination of Child Witness, Sec. 23. Effective December 15, 2000.

⁹ Sec. 25.

¹⁰ Effective March 15, 2003.

Article 48. In all cases of annulment or declaration of absolute nullity of marriage, the Court shall order the prosecuting attorney or fiscal assigned to it to appear on behalf of the State to take steps to prevent collusion between the parties and to take care that evidence is not fabricated or suppressed.

In the cases referred to in the preceding paragraph, no judgment shall be based upon a stipulation of facts or confession of judgment.

Article 60. No decree of legal separation shall be based upon a stipulation of facts or a confession of judgment.

In any case, the Court shall order the prosecuting attorney or fiscal assigned to it to take steps to prevent collusion between the parties and to take care that the evidence is not fabricated or suppressed (101a).

In *Brown v. Yambao* (102 Phil 168), the Court held that although the wife did not interpose the defense of prescription of the suit, the fiscal is allowed to raise it and any relevant matter that may indicate whether the proceedings for legal separation are fully justified.

Another function of the prosecutor is to ascertain if there has been due notice to all parties concerned and that there is justification for the declaration of dependency, abandonment or neglect as stated in the Rule on Commitment of Children.¹¹ The prosecutor's role is as important in the examination of a child witness. Rule on Examination of a Child Witness¹² allows the prosecutor, counsel or guardian ad litem to apply for an order that a deposition of the testimony of the child be taken and that it be recorded and videotaped. If it is the guardian ad litem applies for an order under this section, he shall consult with the prosecutor or counsel subject to the second and third paragraph of section 25(a). Section 27(c) expressly identifies the prosecutor as one of the persons who may be present during the testimony of a child witness in court.

C. Counsel and Guardians

Parties are represented by their counsels and minors by their guardians (or guardians *ad litem*). Section 4(f) of The Rules on Commitment of Children allows a guardian *ad litem* to be appointed if neither of the parents nor the guardian of the child can be located, does not appear in court despite

¹¹ Sec. 4 (h).

¹² Sec. 27.

due notice, or if the court finds them incompetent to protect the best interests of the child. In making the appointment, the court considers the “suitability” of the person considering her background and familiarity with the judicial process, social service programs and child development. These guidelines are reiterated in Section 5 of the Rule on Examination a Child Witness.

In the Rule on Juveniles in Conflict With the Law,¹³ the police officer conducting the initial investigation of a juvenile in conflict with the law shall do so in the presence of either of the parents of the juvenile; in the absence of both parents, the guardian or the nearest relative, or a social welfare officer, and the counsel of his own choice. The rule requires that in their presence, the juvenile shall be informed of his constitutional rights during custodial investigation.¹⁴

D. *Expert Witness*

Expert witnesses, especially clinical psychologists, are very important in actions involving declaration of nullity on the ground of psychological incapacity.¹⁵ In fact in the landmark case of Republic v. Molina,¹⁶ the Supreme Court included in the guidelines in proving psychological incapacity that it must be “medically or clinically identified”. Expert evidence must be adduced to prove that the party is suffering from psychological incapacity. It may be given by qualified psychiatrists and clinical psychologists.

Expert witnesses are also needed to prove: insanity in annulment cases¹⁷ and lesbianism or homosexuality of the respondent in legal separation cases.¹⁸ They may also be used to prove parental (un)fitness in custody cases.

E. *Role of Auxiliary Services*

By virtue of R.A 8369, there is close coordination between the Department of Social Welfare and Development and the Courts. R. A. 8369 provides:

¹³ Effective April 15, 2002.

¹⁴ Sec.8

¹⁵ Fam. Code, Art. 36.

¹⁶ 266 SCRA 572 (1997).

¹⁷ Fam. Code, Art. 45 (2).

¹⁸ Article 55 (6), *Id.*

Section 9. Social Services and Counseling Division. Under the guidance of the Department of Social Welfare and Development (DSWD), a Social Services and Counseling Division (SSCD) shall be established in each judicial region as the Supreme Court shall deem necessary based on the number of juvenile and family cases existing in such jurisdiction. It shall provide appropriate social services to all juvenile and family cases filed with the court and recommend the proper social action. It shall also develop programs, formulate uniform policies and procedures, and provide technical supervision and monitoring of all SSCD in coordination with the judge.

Section 10. Social Services and Counseling Division Staff. The SSCD shall have a staff composed of qualified social workers and other personnel with academic preparation in behavioral sciences to carry out the duties of conducting intake assessment, social case studies, casework and counseling, and other social services that may be needed in connection with cases filed with the court: Provided, however, That in adoption cases and in petitions for declaration of abandonment, the case studies may be prepared by social workers of duly licensed child caring or child placement agencies, or the DSWD. When warranted, the division shall recommend that the court avail itself of consultative services of psychiatrists, psychologists, and other qualified specialists presently employed in other departments of the government in connection with its cases.

The position of Social Work Adviser shall be created under the Office of the Court Administrator, who shall monitor and supervise the SSCD of the Regional Trial Court.

Many Family Courts require court appointed social workers to conduct case study reports once adoption cases have been filed. This is an unnecessary duplication of efforts since the DSWD or child-placement agency has, even before the matching of the applicant adoptive parents and the child, already prepared a case study report. After the six-month supervised trial custody, the DSWD again conducts home visits and prepares reports on both the parents and the child. Aside from the waste of government and human resources, this gives rise to an inevitable delay in the adoption procedure and discourages applicants from adopting legally. Likewise, this provides an opportunity for corruption since adoptive parents are simply too willing to pay off a social worker who might give a negative recommendation at such a late stage in the 12 month adoption process.

The participation of social workers in judicial proceedings is ubiquitous. In Section 9 of the Rule on Guardianship of Minors, the court “shall

order a social worker to conduct a case study of the minor and all the prospective guardians and submit his report and recommendation to the court for its guidance before the scheduled hearing”. The social worker intervenes on behalf of the minor if he finds that the petition for guardianship should be denied. Likewise, Section 8 of the Rule on Custody of Minors and Writ of Habeas Corpus In Relation to Custody of Minors provides that “upon the filing of the verified answer or the expiration of the period to file it, the court may order a social worker to make a case study of the minor and the parties and to submit a report and recommendation to the court at least three days before the scheduled pre-trial”. In Section 10 of the Rule on Juveniles in Conflict With the Law, the social welfare officer, upon the taking into custody of a juvenile in conflict with the law, should “immediately undertake a preliminary background investigation of the juvenile and submit, prior to arraignment of the juvenile, a report on his findings to the Family Court in which the case may be filed”. Furthermore, after the institution of the criminal action, the social worker of the Family Court should immediately undertake a case study of the juvenile and his family, his environment and such other matters relevant to the proper disposition of the case and submit this report before the arraignment.¹⁹

The Rule on Commitment of Children²⁰ gives the DSWD Secretary or her representative having knowledge of a child who appears to be dependent, abandoned or neglected, to file a verified petition for involuntary commitment of said child to the care of any duly licensed child-placement agency. If, after the hearing, the court shall find the child to be dependent, abandoned, or neglected, it shall render judgment over the person and property of the child, committing him to the care and custody of the Department²¹ or licensed child-placement agency or individual until he reaches the age if eighteen (18).²²

¹⁹ Sec. 19.

²⁰ Sec. 4.

²¹ Rule on Commitment of Children, Sec. 4 (n). “If the child is committed to the Department, it shall have the authority to change the custody of a child it had placed with any duly licensed child-placement or child-caring agency or individual if it appears that such change is for the best interests of the child. The Department shall notify the court of any change in custody of the child”.

²² Sec. 4 (j).

2. Operation and Procedure

As earlier mentioned, the law requires that, in legal separation cases, the Court should take steps for the spouses to reconcile. Moreover, article 151 requires the showing of earnest efforts to compromise but such failed before a suit shall be filed or maintained between members of the same family. If this is not complied with, the case may be dismissed on the ground of pre-maturity or lack of compliance with a condition precedent. Earnest efforts however are not necessary in case one of the parties to the action is a stranger to the family.²³ In *Hontiveros v Regional Trial Court*,²⁴ the Supreme Court decided that although the suit over a parcel of land was between brothers, the inclusion of a brother's wife takes the case out of the ambit of article 151. The term "brothers and sisters" who are considered family members does not comprehend "brothers-in law and sisters-in law".

Procedural rules are matters of public policy. They are generally simplified rules that reiterate the Constitutional provisions recognizing the family as a basic autonomous institution and respecting the privacy of all parties in hearings and conciliation of child and family cases. Such shall be treated in a manner consistent with the promotion of the child's and family's dignity and worth, and parties shall be given respect in their privacy at all stages of the proceedings. Records of the cases shall be dealt with utmost confidentiality²⁵ and the identity of parties shall not be divulged unless

²³ Fam. Code, article 150. Family relations shall include those:

1. Between husband and wife;
2. Between parent and child;
3. Among other ascendants and their descendants;
4. Among brothers and sisters.

²⁴ 309 SCRA 340 (1999).

²⁵ Rule on Juveniles in Conflict with the Law, "Sec. 12. Privacy and Confidentiality of Proceedings. All hearings and conciliation of the child and family cases shall be treated in a manner consistent with the promotion of the child's and family's dignity and worth, and shall respect their privacy at all stages of the proceedings. Records of the cases shall be dealt with utmost confidentiality and the identity of parties shall not be divulged unless necessary and with authority of the judge".

"Sec. 36. *Confidentiality of Proceedings and Record*. All proceedings and records involving juveniles in conflict with the law from initial contact until final disposition of the case by the *Family Court* shall be considered privileged and confidential. The public may be excluded from the proceedings and pursuant to the provisions of Section 31 of the Rule on Examination of a Child Witness, the records shall not be disclosed directly or indirectly to anyone by any of the parties or the participants in the proceedings for any

necessary and with authority of the judge.²⁶ The Domestic Adoption Act²⁷ goes a step further by imposing the penalty of imprisonment ranging from one year and one day to two years and/or a fine on any person who violates “established regulations relating to the confidentiality of adoption applications, cases and processes”.²⁸

3. *Provisional Orders*

In cases of violence among immediate family members living in the same domicile or household, the Family Court may issue a restraining order against the accused or defendant upon a verified application by the complainant or the victim for relief from abuse. The court may order the temporary custody of children in all civil actions for their custody. It may also order support *pendente lite*, including deduction from the salary and

purpose whatsoever, except to determine if the juvenile may have his sentence suspended under Section 25 of this Rule or he may be granted probation under the Probation Law, or to enforce the civil liability imposed in the criminal action.

The *Family Court* shall take other measures to protect this confidentiality of proceedings including non-disclosure of records to the media, the maintenance of a separate police blotter for cases involving juveniles in conflict with the law and the adoption of a system of coding to conceal material information, which will lead to the juvenile’s identity. Records of juvenile in conflict with the law shall not be used in subsequent proceedings or cases involving the same offender as an adult”.

Sec. 38. *Sealing of Records.* The Family Court, *motu proprio* or on application of a person who has been adjudged a juvenile in conflict with the law, or if still a minor, on motion of his parents or legal guardian, shall, upon notice to the prosecution and after hearing, order the sealing of the records of the case if it finds that two (2) years have elapsed since the final discharge of the juvenile after suspension of sentence or probation, or from the date of the closure order and he has no pending case of an offense or a crime involving moral turpitude.

Upon entry of the order, the case shall be treated as if it never occurred. All index references shall be deleted and in case of inquiry, the *Family Court*, prosecution, law enforcement officers and all other offices and agencies that dealt with the case shall reply that no record exists with respect to the juvenile concerned. Copies of the order shall be sent to these officials and agencies named in the order. Inspection of the sealed records thereafter may be permitted only by order of the *Family Court* upon petition of the juvenile who is the subject of the records or of other proper parties.

This procedure shall be without prejudiced to the rule on destruction of video or audio tapes under Section 31 of the Rule on the Examination of a Child Witness”.

²⁶ The Family Court Act. Sec 12.

²⁷ RA 8552 (1998).

²⁸ Article VII, Sec 21 (b).

use of conjugal home and other properties in all civil actions for support. In *Reyes v. Ines-Luciano*,²⁹ Celia Reyes filed a petition for legal separation on the ground that her husband, Manuel “pummeled with fist blows that floored her then heeded her head and bumped it on the cement floor and throw her down 13 flights of stairs, which left her unconscious. The Court awarded her support pending litigation even before the trial of the merits. Also, article 49 of the Family Code provides that during the pendency of the action and in the absence of adequate provisions in a written agreement between the spouses, the Court shall provide for the child custody and support. The Court is under the duty to give paramount consideration to the moral and material welfare of said children and their choice of the parent with whom they wish to remain. Even custody battles between the illegitimate parents of a child, the non-custodial parent should be given appropriate visitation rights, as held in *Silva v Court of Appeals*.³⁰

Article 61 of the Family Code gives the spouses the right to live separately from each other after the filing of the petition for legal separation. A suit for legal separation may be grounded on “repeated physical violence or grossly abusive conduct directed against the petitioner, a common child or a child of the petitioner” or attempt on the life of one of the spouses.³¹ On this matter, section 7 of RA 8369 speaks of special provisional remedies.

In cases of violence among immediate family members living in the same domicile or household, the Family Court may issue a restraining order against the accused or defendant upon a verified application by the complainant or the victim for relief from abuse.

²⁹ 88 SCRA 803.

³⁰ 275 SCRA 604.

³¹ The other grounds are physical violence or moral pressure to change religious or political affiliation; attempt of respondent to corrupt or induce the petitioner, a common child or a child of the petitioner, to engage in prostitution, or connivance in such corruption or inducement; final judgment sentencing the respondent to imprisonment of more than six years, drug addiction or habitual alcoholism of the respondent, lesbianism or homosexuality, contracting by the respondent of a subsequent bigamous marriage, sexual infidelity or perversion and abandonment without justifiable cause of more than one year.

³² The Rule on Juveniles In Conflict With the Law provides: Sec. 40. *Contempt Powers*. “A person who directly or indirectly disobeys any order of the Family Court or obstructs or interferes with its proceedings or the enforcement of its orders issued under this Rule shall be liable for contempt of court”.

Generally, family court decisions are final and binding among the parties concerned and their successors in interest. However, decisions regarding support never become final. Periodic penalty payments for disobedience to court judgments regarding maintenance, child custody and visiting rights are not imposed instead, the disobedient party is cited for contempt.³² There is no system of advance payments of maintenance debts. They are paid as they accrue. Appeals may be made to the Court of Appeals and Supreme Court.

Under the Rule on Provisional Orders³³ courts *motu proprio* or upon application under oath of any of the parties may issue provisional orders and protection order as with or without a hearing. These include orders for spousal support, child support child custody, visitation rights to the parent not awarded provisional custody, hold departure and protection orders and appointment of an administrator of common property. These orders may be immediately enforced but the court may require a bond and specify the period, terms and conditions for its effectivity as it may deem proper.³⁴

The Rule on Custody of Minors and Writ of Habeas Corpus In Relation to Custody of Minors³⁵ lays down the procedure for the filing of a verified petition for the rightful custody of a minor. After an answer has been filed or after expiration of the period to file it, the Court may issue a provisional order awarding custody. It also allows the filing of a verified petition for a writ of *habeas corpus* involving custody of minors. The writ shall be enforceable within its judicial region to which the Family Court belongs or if filed with the Supreme Court, Courts of Appeals or any of members, it shall be enforceable anywhere in the Philippines.³⁶

III. NEGOTIATED JUSTICE AND ALTERNATIVE DISPUTE RESOLUTION TECHNIQUES

The Family Code calls for a six-month period before the filing of the petition for legal separation and the first hearing.³⁷ The Court is prohibited

³³ Effective March, 15, 2003.

³⁴ Sec. 1.

³⁵ Effective May, 15, 2003.

³⁶ Sec. 20.

³⁷ Article 58.

from issuing a decree without first taking steps toward the reconciliation of the spouses and “is fully satisfied, despite such efforts, that reconciliation is highly improbable”.³⁸

Family relations are closely safeguarded by the State. Hence even if the State provides for measures to maintain peace and harmony within the family, it frowns upon easy or “quick fix” disposition of disputes when it involves breaking down of instituted families in the form of extra-judicial annulment, and the like. Arrangements between spouses that they are “both free to get any mate and live as husband and wife without any interference by any of us, not either of us can prosecute the other for adultery or concubinage or any other crime or suit arising from our separation” was held illegal. As further proof of the state interest in protecting marriage as a basic social institution,³⁹ the law prohibits the granting of the decree based on “stipulation of fact or confession of judgments”.⁴⁰ However, in the case of *Ocampo v. Florenciano*,⁴¹ the Court clarified that although the defendant may have made a statement admitting guilt or defaulted in the case, such does not preclude a grant of the petition. Since there was evidence of the adultery independent of such statement, the decree may be granted. It would not be based exclusively or mainly on the wife’s confession, hence there is no confession of judgment.

Article 2035 of the Civil Code provides that no compromise upon the following questions shall be valid: the civil status of persons; the validity of a marriage or a legal separation; any ground for legal separation; future support; the jurisdiction of courts; and future legitime.⁴² In cases not covered by these exceptions, compromises are generally available and ideally to be resorted to pursuant to Article 222 of the Civil Code. Earnest efforts

³⁸ Article 59.

³⁹ Fam. Code, Article 1. Marriage is a special contract of permanent union between a man a woman entered into in accordance with law for the establishment of conjugal and family life. It is the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within the limits provided by this Code”.

⁴⁰ Fam. Code, Article 101.

⁴¹ 107 Phil 35 (1960).

⁴² Section 16 if the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages provides the same enumeration of prohibited compromise.

to arrive at a compromise between members of the same family should be made at the *barangay* (community) level though the *Katarungang Pambarangay*.⁴³ Here, the *Punong Barangay* (community chief) has the legal authority to gather the parties for amicable settlement of disputes.⁴⁴ However this cannot be resorted to in cases where the actions are coupled with provisional remedies such as support *pendente lite*. In these cases, suits should be filed directly with the courts.

When the case is finally filed in court, the judge will exert his best efforts to make the parties reconcile. In cases of legal separation, a cooling-off period of six months is provided by law before the case is formally tried. When this fails or is not available, during the pre-trial, the court shall consider the possibility of amicable settlement or of a submission to alternative modes of dispute resolution.⁴⁵ The Section 14 of the 2002 Rule on Declaration of Nullity of Void Marriages and Annulment of Voidable Marriages provides that at the pre-trial conference, the judge may refer the case to a mediator or may mediate by himself. Compromise agreements made and signed by the parties during mediation or pre-trial is subject to the court's approval and is thereafter immediately executory. In case mediation is not availed of or where it is unsuccessful, the Court will then proceed to the pre-trial conference at which time it will consider receiving expert testimony.

Mediation is one concrete way by which delays in the delivery of justice and associated limitations on access to justice could be resolved. Only the Supreme Court is up to-date in its caseload. All other courts are saddled with an increasing backlog of cases. There is also a prevalent perception among Filipinos that "some or quite a few" judges accept bribes. Not only is there corruption in the judiciary but also a weak enforcement of the code of ethical and professional standards among the members of the judiciary. The lack of transparency in the way courts function and the specific responsibilities and authority of judges and court personnel have given rise to questions of the integrity of the courts.⁴⁶

⁴³ Or else the action may be dismissed under Rule 16 (1) (j) for failure to comply with a condition precedent. This Filipino term means "community justice".

⁴⁴ Sec. 408, Local Government Code.

⁴⁵ Rule 18, Section 2 (a), Rules of Court.

⁴⁶ Other complaints leveled against the courts are ineffective administrative structures and operating systems; deficient court technologies and shabby facilities; lack of human resource development and poor or ineffectual public information and collaboration with civil society.

To address the shortcomings of the judiciary, the Supreme Court has developed the Action Program, its “blueprint to improve the judicial system” as a way of correcting the negative cognition by the public of it. More importantly, the Supreme Court issued Resolution A.M. No. 01-10-5-SC-PHILJA, covering the following:

1. Administrative Order establishing the Philippine Mediation Center;
2. Second Revised Guidelines for the implementation of mediation proceedings;
3. Code of Ethical Standards for Mediators;
4. Standards and Procedure for Accreditation of Mediators for court-referred/court -related mediation cases;
5. Compensation Guidelines for Mediators and Supervisors.

To decongest the court dockets, the Supreme Court issued Administrative Circular No. 20-2002⁴⁷ instructs all Trial Courts Presiding Judges and Branch Clerks of Court to the task of conducting a monthly inventory of cases in their dockets referable to mediation. Pursuant to the Court’s Second Revised Guidelines dated 16 October 2001, the cases that may be referred are as follows:

- a) All civil cases, settlement of estates, and cases covered by the *Rule on Summary Procedure* except those which by law may not be compromised;
- b) Cases cognizable by the Lupong Tagapamayapa under the Katarungang Pambarangay Law;
- c) The civil aspect of *B.P. 22*⁴⁸ cases; and
- d) The civil aspect of quasi-offenses under Title 14 of the *Revised Penal Code*.

Mediation is available in civil, labor and special civil action cases. It can not be resorted to in any case that involves imprisonment or custody. It likewise excludes, restraining order and preliminary injunction cases.

It bears stressing that extra-judicial mediation is not considered an alternative to the public court system in annulment, declaration of nullity and

⁴⁷ April 24, 2002.

⁴⁸ Known as the Bouncing Checks Law. Effective June 29, 1979.

legal separation cases in which the status of persons is in issue. The contract of marriage is imbued by public interest and is greatly safeguarded by the State and thus can not be subject to stipulations between the parties. In other cases, such as support and custody of children, extra-legal measures are most commendable as it is less resource consuming. The Courts would usually respect the agreement between the parties unless such was not in the best interest of the child and in accordance with article 213 of the Family Code that no child below the age of seven shall be separated from his/her mother unless the courts find compelling reasons to order otherwise.

Although only courts of justice can pronounce a marriage void or declare legal separation between spouses, incidental matters such as support, custody or partition of property may be agreed upon by the parties.⁴⁹ In *Araneta v Concepcion*⁵⁰ the Supreme Court explained that although the six month period is mandatory, evidence should be allowed that within the discretion of the court as to the custody and alimony *pendente lite* may be exercised. Neither is this period an absolute bar to the hearing of a motion for preliminary injunction for the return of the wife's paraphernal and exclusive properties under the management of the husband prior to the expiration of the period.⁵¹

IV. CONCLUSION

The contemporary Filipino family is witness to the tension between the respect for the principle of privacy, on one hand, and the protection of the varied interests of the individuals who comprise the family. An indispensable part of this equation is the State's overarching interest in promoting marriage and family as institutions. The task we face is to have the wisdom know when the doctrine of family privacy should be respected or disregarded. The starkest example is in cases of domestic violence.

When the husband/father, physically abuses his wife and children who seek help from the police, the latter's first impulse is to view such beatings as falling within the authority of the head of the family to discipline his dependents for misconduct. In the case of *Thurman v. City of Torrington*,⁵²

⁴⁹ Article 49.

⁵⁰ 99 Phil 709 (1956).

⁵¹ 46 SCRA 11 (1972).

⁵² 595 F. Supp.1521.

the Court held the city liable for the failure of its policemen to come to aid of the wife who called for help numerous times in order to subdue her violent husband. Likewise, marital rape is characteristic of an abusive marriage and in *Warren v State*⁵³ the court affirmed that a married woman does not give up her right to state protection from the violent acts of rape and aggravated sodomy performed by her husband. *People v Liberta*⁵⁴ on the other hand underscored that there was no rational basis for distinguishing between marital rape and non-marital rape and as such, a marital rape exemption was unconstitutional. It held that “there is no evidence to support the argument that marital rape has less severe consequences than other rape”. It pointed to numerous studies that showed that it is frequently quite violent and has more severe, traumatic effects on the victim than non-marital rape.

I propose that this be one instance when alternative dispute resolution including mediation should not be allowed lest it give the impression that violence committed on a person in an intimate or filial relationship is indeed a matter that the parties can negotiate about. Likewise, the duty to demonstrate earnest efforts to compromise might mislead the oppressive spouse or parent into doubting of the depravity of these of violent acts. The use of violence in marriage magnifies disparate interpersonal power of the violent spouse/ parent vis-à-vis the victims. The determinants of power are dominance, decision-making and the relative levels of resources and as a result, abuse takes place when the stronger takes advantage of the weaker.⁵⁵ Thus, it is a fallacy to presume that an apology or a promise “to stop” without the necessary psychological counseling and legal restraints would be sufficient to return or strike a balance in this power relationship.

Now pending in the Philippine Congress are bills on abuse of women in a domestic or intimate relationships and effort must be exerted so that our officials would give these the highest priority. Although the Family Courts have jurisdiction over these cases, a clear and unambiguous law punishing domestic violence, defining the extent of the criminal act and legislating the corresponding criminal sanctions is needed. This will be an unmistakable reflection of Filipino mores and values that will not allow domestic aggression under the guise of family privacy and compel us to view it without the cloak of legalities and technicalities.

⁵³ 255 Ga.151, 336 S.E. 2d 221.

⁵⁴ 64 NY 2d 152, 485 NYS 2d 207 (1984).

⁵⁵ Frieze and Browne, *Violence in Marriage. Family Violence*, Ohlin and Tonry, ed (1993).