



Republic of the Philippines
Supreme Court
Manila

CIRCULAR NO. 2-90*

TO: COURT OF APPEALS, REGIONAL TRIAL COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, SHARI'A DISTRICT COURTS AND SHARI'A CIRCUIT COURTS, ALL MEMBERS OF THE GOVERNMENT PROSECUTION SERVICE, AND ALL MEMBERS OF THE INTEGRATED BAR OF THE PHILIPPINES

SUBJECT: Guidelines to be observed in appeals to the Court of Appeals and to the Supreme Court

1. No common mode of appeal to Court of Appeals and Supreme Court.-- The provisions of Rules 41 and 42 of the Rules of Court, prescribing a common mode of appeal to the Court of Appeals and to the Supreme Court, and a common procedure for considering and resolving an appeal, are no longer in force. They have been largely superseded and rendered functus officio by certain statutes which wrought substantial changes in the appellate procedures in this jurisdiction, notably: Republic Acts Nos. 5433 and 5440 (both effective on September 9, 1968) and 6031 (effective August 4, 1969), and Batas Pambansa Blg. 129 (effective August 14, 1981).

2. Appeals from Regional Trial Courts to the Supreme Court.-- Except in criminal cases where the penalty imposed is life imprisonment or reclusion perpetua, judgments of regional trial courts may be appealed to the Supreme Court only by petition for review on certiorari in accordance with Rule 45 of the Rules of Court in relation to Section 17 of the Judiciary Act of 1948, as amended, 1/ this being the clear intendment of the provision of the Interim Rules that "(a)ppels to the Supreme Court shall be taken by petition for certiorari which shall be governed by Rule 45 of the Rules of Court."2/

*Based on the Resolution of the Court En Banc in UDK-9748 (Anacleto Murillo v. Rodolfo Consul), March 1, 1990

1/Limiting the issues thus appealable to errors or questions of law, or questions involving constitutionality or validity of any treaty, executive agreement, law, ordinance, or executive order or regulation; or the legality of any tax, impost, assessment, or toll, or penalty imposed in relation thereto; or the jurisdiction of an inferior court. SEE, HOWEVER, Sec. 54, R.A. No. 6657, fn 2a, infra.

2/Par. 25, Sub-Head F., APPEAL TO THE SUPREME COURT; cf., Pars. 16-24, Sub-Head E, APPELLATE PROCEDURE (in the Intermediate Appellate Court)

N.B. Appeals from any decision, order or ruling of a Constitutional Commission (Civil Service Commission, Commission on Elections, or Commission on Audit) may, unless otherwise provided by law, be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof (Sec. 7, ART. IX, 1987 Constitution)

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3. Appeals to the Court of Appeals.-- On the other hand, appeals by certiorari will not lie with the Court of Appeals.^{2a/} Appeals to that Court from Regional Trial Courts may be taken:

a) by writ of error (ordinary appeal) -- where the appealed judgment was rendered in a civil or criminal action by the regional trial court in the exercise of its original jurisdiction; or

b) by petition for review-- where the judgment was rendered by the regional trial court in the exercise of its appellate jurisdiction.

The mode of appeal in either instance is entirely distinct from an appeal by certiorari to the Supreme Court.

4. Erroneous Appeals. -- An appeal taken to either the Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed.

a) Appeal to the Supreme Court by notice of appeal. -- No appeal may be taken to the Supreme Court from a judgment of a regional trial court by notice of appeal under Rule 41 of the Rules of Court, regardless of any statement in the notice that the Supreme Court is the court of choice; and no judge or clerk of a regional trial court shall elevate, or cause to be elevated, to the Supreme Court the records of a case thus erroneously appealed^{3/} under pain of disciplinary action, said officials, no less than the attorney taking the appeal, being chargeable with knowledge that the appellate jurisdiction of the Supreme Court may properly be invoked only through petitions for review or certiorari.

b) Raising factual issues in appeal by certiorari. -- Although submission of issues of fact in an appeal by certiorari taken to the Supreme Court from the regional trial court is ordinarily proscribed, the Supreme Court nonetheless retains the option, in the exercise of its sound discretion and considering the attendant circumstances, either itself to take cognizance of and decide such issues or to refer them to the Court of Appeals for determination.

c) Raising issues purely of law in the Court of Appeals, or appeal by wrong mode. -- If an appeal under Rule 41 is taken from the regional trial court to the Court of Appeals and therein the appellant raises only questions of law, the appeal shall be dismissed, issues purely of law not being reviewable by said

^{2a/} R.A. No. 6657 (1988) provides, however, that appeals from the Agrarian Reform Arbitration Board of the Department of Agrarian Reform shall be taken to the Court of Appeals by certiorari within 15 days from notice of final judgment or order (Sec. 54).

^{3/}In *Service Specialists, Inc. v. Sheriff of Manila*, 145 SCRA 139, the differences in modes of appeal was once again emphasized, it being held that an appeal from the order of the trial court which dismissed a petition for relief from judgment "for lack of jurisdiction to hear and determine the same" "should have been made to this Court through a petition for review on certiorari in accordance with the Judiciary Act of 1948 as amended by Republic Act No. 5440 and Section 25 of the Interim Rules," and not by "a notice of appeal to the Intermediate Appellate Court."

Court.^{4/} So, too, if an appeal is attempted from the judgment rendered by a Regional Trial Court in the exercise of its appellate jurisdiction by notice of appeal, instead of by petition for review, the appeal is inefficacious and should be dismissed.

d) No transfer of appeals erroneously taken. -- No transfers of appeals erroneously taken to the Supreme Court or to the Court of Appeals to whichever of these Tribunals has appropriate appellate jurisdiction will be allowed;^{5/} continued ignorance or wilful disregard of the law on appeals will not be tolerated.

e) Duty of counsel. -- It is therefore incumbent upon every attorney who would seek review of a judgment or order promulgated against his client to make sure of the nature of the errors he proposes to assign, whether these be of fact or of law; then upon such basis to ascertain carefully which Court has appellate jurisdiction; and finally, to follow scrupulously the requisites for appeal prescribed by law, ever aware that any error or imprecision in compliance may well be fatal to his client's cause.^{6/}

FOR STRICT COMPLIANCE.

March 9, 1990.



MARCELO B. FERNAN
Chief Justice