



Republic of the Philippines
Supreme Court
Manila

CIRCULAR NO. 37-93

TO : COURT OF APPEALS, SANDIGANBAYAN, COURT OF TAX APPEALS, REGIONAL TRIAL COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, SHARI'A DISTRICT COURTS AND SHARI'A CIRCUIT COURTS

ALL PRESIDING JUSTICES/JUDGES AND ALL CLERKS OF COURT OF AFORESAID COURTS

ALL MEMBERS OF THE GOVERNMENT PROSECUTION SERVICE

ALL MEMBERS OF THE INTEGRATED BAR OF THE PHILIPPINES

SUBJECT: **Amendment to MANUAL FOR CLERKS OF COURT**
Re: Delegation of Reception of Evidence in case of default

Section F, 1. of the Manual for Clerks of Court (pp. 75-76) is hereby amended to read as follows:

1. *In Default Cases.*-- When a defendant is declared in default (for failure to file answers), or considered as in default (for failure to appear at the pre-trial), the Court may now authorize the Clerk of Court to receive evidence *ex-parte*. The contrary doctrine laid down in *Lim Tanhu vs. Ramolette*¹ has been overruled in *Gochangco v. CFI of Negros Occidental*.²

"Now, that declaration does not reflect long observed and established judicial practice with respect to default cases. It is not quite consistent, too, with the several explicitly authorized instances under the Rules where the function of receiving evidence and even of making recommendatory findings of facts on the basis thereof may be delegated to commissioners, inclusive of the


¹ 66 SCRA 453 (1975)

² L-49396, January 15, 1988 (157 SCRA 200)

Clerk of Court. These instances are set out in Rule 33, treating of presentation of evidence before commissioners, etc., in particular situations, such as when the trial of an issue of fact requires the examination of a long account, or when the taking of an account is necessary for the information of the court, or when issues of fact arise otherwise than upon the pleadings or while carrying a judgment or order into effect; Rules 67 and 69, dealing with submission of evidence also before commissioners in special civil actions of eminent domain and partition, respectively; Rule 86 regarding trials of contested claims in judicial proceedings for the settlement of a decedent's estate; Rule 136 empowering the clerk of court, when directed by the judge *inter alia* to receive evidence relating to the accounts of executors, administrators, guardians, trustees and receivers, or relative to the settlement of the estates of deceased persons, or to guardianships, trusteeships, or receiverships. In all these instances, the competence of the clerk of court is assumed. Indeed, there would seem, to be sure, nothing intrinsically wrong in allowing presentation of evidence *ex parte* before a Clerk of Court. Such a procedure certainly does not foreclose relief to the party adversely affected who, for valid cause and upon appropriate and seasonable application, may bring about the undoing thereof or the elimination of prejudice thereby caused to him; and it is, after all, the Court itself which is duty bound and has the ultimate responsibility to pass upon the evidence received in this manner, discarding in the process such proofs as are incompetent and then declare what facts have thereby been established. In considering and analyzing the evidence preparatory to rendition of judgment on the merits, it may not unreasonably be assumed that any serious error in the *ex-parte* presentation of evidence, prejudicial to any absent party, will be detected and duly remedied by the Court, and/or may always, in any event; be drawn to its attention by any interested party."³

For your information and guidance.

May 28, 1993.



ANDRES R. NARVASA
Chief Justice

³ (Reiterated in *Monserate v. Court of Appeals*, 178 SCRA 153 [1989]; *Heirs of the late Jesus Tan v. Sales*, G.R. No. 53546, June 28, 1992; 210 SCRA 303.