

CTA CIRCULAR NO. 01-2013

GUIDELINES IMPLEMENTING THE JUDICIAL AFFIDAVIT RULE (JAR), Administrative Matter No. 12-8-8-SC, IN THE COURT OF TAX APPEALS (CTA).

WHEREAS, the Judicial Affidavit Rule took effect on January 1, 2013;

WHEREAS, the Judicial Affidavit Rule shall apply to all actions, proceedings, and incidents requiring the reception of evidence before the Court of Tax Appeals;

WHEREAS, both civil and criminal cases before the Court of Tax Appeals, which invariably involve the presentation of voluminous documents in evidence, are not of the same nature as the cases tried in the regular courts;

NOW, THEREFORE, the Court of Tax Appeals *En Banc*, hereby adopts the following GUIDELINES IMPLEMENTING THE JUDICIAL AFFIDAVIT RULE (JAR), ADMINISTRATIVE MATTER NO. 12-8-8-SC, IN THE COURT OF TAX APPEALS (CTA):

Section 1. **Scope.** – The following “Guidelines Implementing the Judicial Affidavit Rule (JAR), Administrative Matter No. 12-8-8-SC, in the Court of Tax Appeals (CTA)” or **CTA Guidelines on JAR**, shall apply to all actions, proceedings, and incidents requiring the reception of evidence before the Court of Tax Appeals.

Sec. 2. **Submission of Judicial Affidavits and Exhibits in lieu of direct testimonies.** – (a) The parties shall file with the court and serve on the adverse party, personally or by licensed courier service, not later than five (5) days before pre-trial or preliminary conference or the scheduled hearing with respect to motions and incidents, the following:

(1) The judicial affidavits of their witnesses, which shall take the place of such witnesses’ direct testimonies; and

(2) The parties’ documentary or object evidence, if any, which shall be attached to the judicial affidavits and marked as Exhibits C-1, C-2, C-3 and so on for the complainant or Exhibits P-1, P-2, P-3 and so on for the petitioner or plaintiff, and as Exhibits R-1, R-2, R-3 and so on for the respondent or Exhibits D-1, D-2, D-3 and so on for the defendant.

(b) Should a party or a witness desire to keep the original document or object evidence in his/her possession, he/she may, after the same has been identified, marked as exhibit, and authenticated, warrant in his/her judicial affidavit that the copy or reproduction attached to such affidavit is a faithful copy or reproduction of that

original. In addition, the party or witness shall bring the original document or object evidence for comparison during the preliminary conference with the attached copy, reproduction, or pictures, failing which the latter shall not be admitted. This is without prejudice to the introduction of secondary evidence in place of the original when allowed by existing rules.

Sec. 3. **Contents of Judicial Affidavit.** – A Judicial affidavit shall be prepared in the language known to the witness and, if not in English or Filipino accompanied by a translation in English or Filipino, and shall contain the following:

(a) The name, age, residence or business address, and occupation of the witness;

(b) The name and address of the lawyer who conducts or supervises the examination of the witness and the place where the examination is being held;

(c) A statement that the witness is answering the questions asked of him/her, fully conscious that he/she does so under oath, and that he/she may face criminal liability for false testimony or perjury;

(d) Questions asked of the witness and his/her corresponding answers, consecutively numbered, that:

(1) Show the circumstances under which the witness acquired the facts upon which he/she testifies;

(2) Elicit from him/her those facts which are relevant to the issues that the case presents; and

(3) Identify the attached documentary and object evidence and establish their authenticity in accordance with the Rules of Court;

(e) The signature of the witness over his/her printed name; and

(f) A jurat with the signature of the notary public who administers the oath or an officer who is authorized by law to administer the same.

Sec. 4. **Sworn attestation of the lawyer.** – (a) The judicial affidavit shall contain a sworn attestation at the end, executed by the lawyer who conducted or supervised the examination of the witness, to the effect that:

(1) He/she faithfully recorded or caused to be recorded the questions he/she asked and the corresponding answers that the witness gave; and

(2) Neither he/she nor any other person then present or assisting him/her coached the witness regarding the latter's answers.

(b) A false attestation shall subject the lawyer mentioned to disciplinary action, including disbarment.

Sec. 5. **Subpoena.** – If the government employee or official, or the requested witness, who is neither the witness of the adverse party nor a hostile witness, unjustifiably declines to execute a judicial affidavit or refuses without just cause to make the relevant books, documents, or other things under his/her control available for copying, authentication, and eventual production in court, the requesting party may avail himself/herself of the issuance of a subpoena *ad testificandum* or *duces tecum* under Rule 21 of the 1997 Rules of Civil Procedure. The rules governing the issuance of a subpoena to the witness in this case shall be the same as when taking his/her deposition except that the taking of a judicial affidavit shall be understood to be *ex parte*. No judicial affidavit is required for a hostile or an adverse witness.

Sec. 6. **Offer of and objections to testimony in judicial affidavit.** – The party presenting the judicial affidavit of his/her witness in place of direct testimony shall state the name of the witness and the purpose of such testimony at the start of the presentation of the witness who, however, shall first be sworn to. The judicial affidavit need not be marked as an exhibit for the party since the said judicial affidavit already constitutes as the direct testimony of the witness.

The adverse party may move to disqualify the witness or to strike out his/her affidavit or any of the answers found in it on ground of inadmissibility. The court shall promptly rule on the motion, and if granted, shall cause the marking of any excluded answer by placing it in brackets under the initials of an authorized court personnel, without prejudice to a tender of excluded evidence under Section 40 of Rule 132 of the Rules of Court.

Sec. 7. **Examination of the witness on his/her judicial affidavit.** – The adverse party shall have the right to cross-examine the witness on his/her judicial affidavit and on the exhibits attached to the same. The party who presents the witness may also examine him/her as on re-direct and the adverse party may also examine him/her on re-cross. In every case, the court shall take active part in examining the witness to determine his/her credibility as well as the truth of his/her testimony and to elicit the answers that it needs for resolving the issues.

Sec. 8. **Formal offer of evidence and objections thereto.- (a)** Within twenty (20) days from the termination of the testimony of his/her last witness, unless otherwise directed by the Court, a party shall make a written formal offer of evidence of his/her documentary or object exhibits in their chronological order, stating the description and purpose or purposes for which he/she offers the particular exhibit.

(b) Within ten (10) days from receipt of the formal offer of evidence, unless otherwise directed by the Court, the adverse party may file his/her comment or objection thereto in writing, if any, to its admission. After receipt of the comment or objection or the expiry of

the period granted, the court shall make its ruling on the formal offer of evidence.

Sec. 9. Application of the CTA GUIDELINES ON JAR to criminal actions. - (a) The CTA Guidelines on JAR shall apply to all criminal actions:

(1) Where the maximum of the imposable penalty does not exceed six years;

(2) Where the accused agrees to the use of judicial affidavits, irrespective of the penalty involved; or

(3) With respect to the civil aspect of the actions, whatever the penalties involved are.

(b) The prosecution shall submit the judicial affidavits of its witnesses not later than five (5) days before the scheduled pre-trial or trial date of presentation of its respective witnesses, serving copies of the same upon the accused. The complainant or public prosecutor shall attach to the affidavit such documentary or object evidence as he/she may have, marking them as Exhibits C-1, C-2, C-3 and so on for the complainant or as Exhibits P-1, P-2, P-3 and so on for the plaintiff. No further judicial affidavit, documentary, or object evidence shall be admitted at the trial.

(c) If the accused desires to be heard on his/her defense after receipt of the judicial affidavits of the prosecution, he/she shall have the option to submit his/her judicial affidavit as well as those of his/her witnesses to the court within ten (10) days from receipt of such affidavits and serve a copy of each on the public and private prosecutor, including his/her documentary and object evidence previously marked as Exhibits A-1, A-2, A-3, and so on. These affidavits shall serve as direct testimonies of the accused and his/her witnesses when they appear before the court to testify.

Sec. 10. Effect of non-compliance with the CTA Guidelines on JAR.- (a) A party who fails to submit the required judicial affidavits and exhibits on time shall be deemed to have waived their submission. The court may, however, allow only once the late submission of the same provided, the delay is for a valid reason, would not unduly prejudice the opposing party, and the defaulting party pays a fine of not less than ₱1,000.00 nor more than ₱5,000.00, at the discretion of the court.

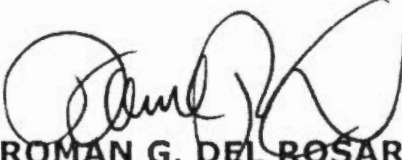
(b) The court shall not consider the affidavit of any witness who fails to appear at the scheduled hearing of the case as required. Counsel who fails to appear without valid cause despite notice shall be deemed to have waived his client's right to confront by cross-examination the witnesses there present.

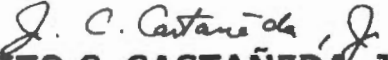
(c) The court shall not admit as evidence judicial affidavits that do not conform to the content requirements of Section 3 and the attestation requirement of Section 4 above. The court may, however, allow only once the subsequent submission of the compliant

replacement affidavits before the hearing or trial provided the delay is for a valid reason and would not unduly prejudice the opposing party and provided further, that public or private counsel responsible for their preparation and submission pays a fine of not less than ₱1,000.00 nor more than ₱5,000.00, at the discretion of the court.

Sec. 11. **Effectivity.** - The CTA Guidelines on JAR shall take effect immediately.

Quezon City, JUL 01 2013

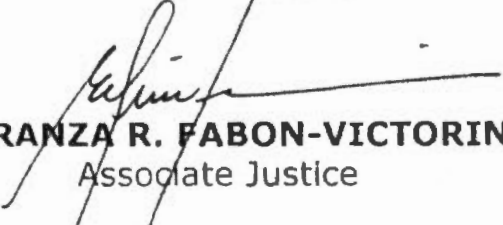

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