

Special Proceedings

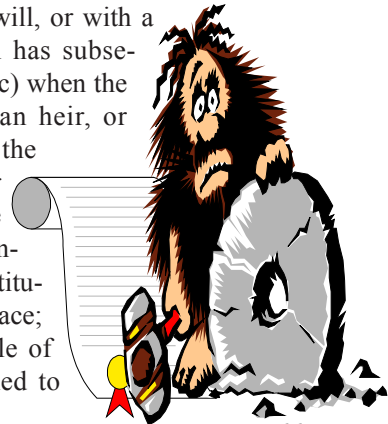


A special proceeding is an application in court to establish the status or right of a party, or the existence of a particular fact.

1. **Settlement of the estate of deceased persons** (Rule 73 up to 90 of the Rules of Court) - The estate may be settled either judicially or extrajudicially. If the decedent left no will, had no debts, and the heirs are all of age, or the minors are represented by their judicial or legal representatives duly authorized for the purpose, the parties may, without securing letters of administration, divide the estate among themselves as they see fit, by means of a public document filed in the office of the register of deeds. Should they disagree, they may do so in an ordinary action for partition. **A sole heir whose predecessor in interest did not leave a will, may adjudicate to himself the entire estate by means of an affidavit filed in the office of the Register of Deeds.** An extra-judicial partition or settlement shall not however be binding upon any person who has not participated therein or had no notice thereof. This is so because he was not privy to (or did not participate in) the settlement of the estate.



2. **Escheat** - the real and personal property of a deceased person become the property of the State upon his death (without leaving a will or legal heirs). A particular property is subject to escheat proceeding whenever the owner: (a) dies intestate leaving no known heir; (b) when he dies without a will, or with a void will, or one which has subsequently lost its validity; (c) when the will does not institute an heir, or otherwise dispose of all the property of the testator, or if the heir dies before the testator, or repudiates the inheritance, there being no substitution, and no right of accretion takes place; (d) when the heir instituted is incapable of succeeding. The estate shall be assigned to



the municipality or city where the property escheated is located, for the benefit of public schools, and public charitable institutions and centers. When an heir appears and proves he is entitled to the property escheated, he may file a claim for possession of and title to the property within five years from the date of the judgment of the court.

3. Guardianship and custody of children (Rule 92 up to 97) - A guardian is a person in whom the law has entrusted the custody and control of the person or estate or both of an infant, insane or other person incapable of managing his affairs.

4. Trustees (Rule 98) - If a testator has omitted in his will to appoint a trustee in the Philippines, and if such appointment is necessary to carry into effect the provisions of the will, the proper Regional Trial Court may after notice to all persons interested, appoint a trustee who shall have the same rights, powers, and duties, and in whom the estate shall vest, as if he had been appointed by the testator.

5. Adoption and custody of minors (Rule 99, as modified by R.A. 8552 Domestic Adoption Act of 1998) - A person of age and in possession of full civil capacity and legal rights may adopt, provided he is in a position to support and care for his children, legitimate or illegitimate in keeping with the means of the family (Art.183, FC) The adopter must be at least 16 years older than the adopted unless the adopter is the parent by nature of the adopted or is the spouse of the legitimate parent of the person to be adopted (Art. 183, FC)

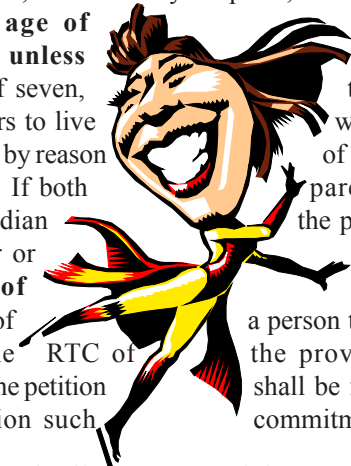


Consent of the following must be obtained: the spouse of the petitioner, if any; the child to be adopted if fourteen years of age or over and not incompetent; the children of the petitioners above ten years of age, if any; the natural parents of the child, or the guardian.

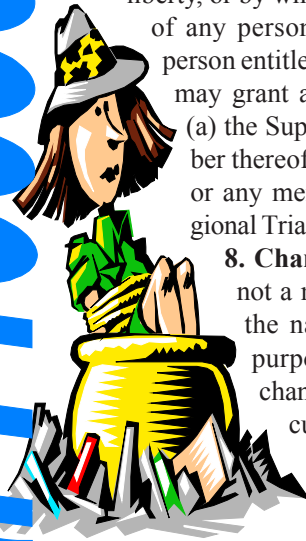
The adopted child shall become the legal heir of his parents by adoption and shall also remain the legal heir of his natural parents. His surname is changed to that of the petitioner (an amended birth certificate is issued to him). In the case of death of the adopted person, his parents and relatives by nature, and not by adoption, shall be his legal heirs.

A child below the age of seven as a rule cannot be separated from the mother, unless there is a compelling reason. If a child is above the age of seven, the court may permit him to choose which parent he prefers to live with, except if the parent chosen is unfit to take charge of the child by reason of moral depravity, habitual drunkenness, incapacity or poverty. If both parents are improper persons, the court may designate as guardian the paternal or maternal grand-parents or the eldest brother or sister or some reputable or discreet person.

6. Hospitalization of insane persons (Rule 101) - A petition for the commitment of a person to a hospital or other place for the insane may be filed with the RTC of the province or city where the person alleged to be insane is found. The petition shall be filed by the Director of Health in all cases where in his opinion such commitment is for the public welfare, or



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for the welfare of the said person who in his judgment is insane and such person or the one having charge of him is opposed to his being taken to a hospital or other place for the insane. The Court shall make proper provision for the custody of property or money belonging to the insane person until a guardian has been properly appointed.

7. Habeas corpus (Rule 102) - The writ of habeas corpus extends to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto. The following may grant a writ of habeas corpus: (a) the Supreme Court or any member thereof; (b) the Court of Appeals or any member thereof; (c) any Regional Trial Court judge within his jurisdiction.

8. Change of Name (Rule 103) - a matter of privilege, not a matter of right because the State takes interest in the names borne by individuals and entities for the purpose of identification. Some proper grounds for change of name : (a) when the official name is ridiculous and tainted with dishonour, or is extremely difficult to write or pronounce; (b) when there is a change in the status of the petitioner; (c) when necessary to avoid confusion.

9. Voluntary Dissolution of Corporations (Rule 104) - The petition shall be signed by a majority of its board of directors or other officers having the management of its affairs, verified by its president or secretary or one of its directors, and shall set forth all claims and demands against it, and that its dissolution was resolved upon by a majority of the members, or if a stock corporation, by the affirmative vote of the stockholders holding and representing two-thirds of all shares of stock issued or subscribed, at a meeting of its members or stockholders.

10. Judicial approval of voluntary recognition of minor natural children, Rule 105 - granted on the basis that the recognition of the child was willingly made by the parent or parents concerned, and that the recognition is for the best interest of the child.



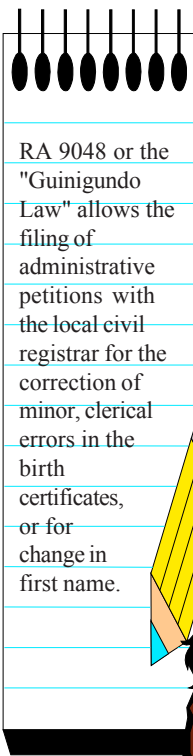
11. Constitution of family home (Rule 106, repealed by the Family Code) - it is deemed constituted on a house and lot from the time it is occupied as a family residence.

12. Absentees (Rule 107) - When a person disappears from his domicile, his whereabouts being unknown, and without having left an agent to administer his property, or the power conferred upon the agent has expired, any interested party, relative or friend may petition the RTC of the place where the absentee resided before his disappearance, for the appointment of a person to represent him provisionally in all that may be necessary. **After a lapse of two years from his disappearance and without any news about the absentee or since the receipt of the last news, or of five years in case the absentee has left in charge of the administration of his property, the declaration of his absence and appointment of a trustee or administrator may be applied for.**



The following may file the petition for declaration of absence: (1) the spouse present; (b) the heirs instituted in a will, who may present an authentic copy of the same; (c) the relatives who would succeed by the law of intestacy; (d) those who have over the property of the absentee some right subordinated to the condition of his death.

13. Cancellation or correction of entries in the civil registry (Rule 108) - Upon good and valid grounds, the following entries may be cancelled or corrected: (a) births; (b) marriage; (c) deaths; (d) legal separation; (e) judgments of annulments of marriage; (f) judgments declaring marriages void from the beginning; (g) legitimization; (h) adoptions; (i) acknowledgments of natural children; (j) naturalizations; (k) election, loss or recovery of citizenship; (l) civil interdiction; (m) judicial determination of filiation; (n) voluntary emancipation of a minor; and (o) changes of name. If the correction sought to be made in the civil registry is clerical, the procedure to be adopted is summary. If the correction affects the civil status, citizenship or nationality of a party, it is deemed substantial, and the procedure must be adversarial. If the relevant facts have been fully and properly developed, where the opposing counsel is given the opportunity to demolish the opposite party's case, and the evidence is thoroughly weighed and considered, the proceeding is an adversarial or an appropriate proceeding.



RA 9048 or the "Guinigundo Law" allows the filing of administrative petitions with the local civil registrar for the correction of minor, clerical errors in the birth certificates, or for change in first name.

