

**Administrative Order No. 7**  
Series of 2005

**SUBJECT: Roles and Responsibilities of Social Workers in Handling Cases on Annulment, Nullity of Marriage, and Custody of Children**

**I. Rationale:**

The family is the basic unit of society. All efforts are directed towards its preservation and strengthening. But the family is beset with challenges on all areas of its development. The breakdown of the family particularly marital conflict and differences between couples causes a lot of anxieties and even trauma to both parties, more so to the children. Sometimes, these differences lead to separation. To cushion the effects of the separation on the couple and the children, many efforts are needed to help the couple and children accept the situation, identify and plan alternatives and come up with a sound decision. These are when the expertise of the social workers are required and valued.

There is no study yet on the number of annulment, nullity of marriage, legal separation, and child custody but the increasing number of referrals to the Department by the courts, concerned agencies/citizens, and couples themselves pose a challenge to the social workers in the management of these cases. In some instances, some social workers are not properly guided on the parameters of their roles when called upon by the court or by the parties involved in such cases themselves.

To ensure well-defined roles, responsibilities, procedures, and other parameters of the social workers of the Department, and whenever applicable, of the Family Courts and local government units (LGU) along this social issue, this Order is hereby issued.

**II. Legal Base:**

1. The Philippine Constitution – Section 12 provides that the State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous and social institution.
2. Family Code of the Philippines or Executive Order 209 (1987)
3. The Child and Youth Welfare Code or Presidential Decree 603 defines the rights of children, the rights and liabilities of parents and the roles of the Department of Social Welfare and Development.

4. Family Courts Act of 1997 – RA 8369 designates the Family Court Social Workers to provide appropriate social services to all juveniles and family cases falling within the jurisdiction of the Family Court
5. Republic Act 9262 An Act Defining Violence Against Women and their Children, providing for protective measures for victims, prescribing penalties therefor, and for other purposes
6. Supreme Court En Banc Resolution A. M. No. 02-1-19-SC dated April 15, 2002 re: Rule on Commitment of Children
7. Supreme Court Rules on Absolute Nullity of Marriages and Annulment of marriage – A.M. No. 02-11-10-SC
8. Supreme Court Rules on Legal Separation – A. M. No. 02-11-11-SC
9. Supreme Court Rules on Custody of Children and Writ of habeas Corpus – A.M. No. 03-04-04-SC
10. Supreme Court En Banc resolution dated September 2000 re: Clarifying the Duties of the Social Workers of the Family Courts or Regional Trial Court under the Family Courts Act of 1997.
11. Memorandum Circular No. 28, series of 2004 – Delineation of Agencies' Roles on the Management of Court-Related Cases

## **II. Objectives:**

**General :** To guide social workers in their roles and responsibilities in the management of annulment, nullity of marriage, and child custody cases.

### **Specific:**

1. To identify the specific responsibilities and tasks of social workers of the Department, LGUs, and Family Courts to ensure effective and efficient management of cases.
2. To provide an array of identified specific areas of concerns to be reflected in the home or child study report for submission to the court.
3. To encourage social workers and appreciate their expertise and roles and responsibilities in managing cases of annulment, nullity of marriage, and child custody.

### III. Definition of Terms:

The following terms were defined operationally, based on the indicated sources, for better understanding of the social workers.

1. **Marriage** is a special contract of permanent union between a man and a woman entered into in accordance with the law for the establishment of conjugal relationship and family. (Source: E.O. 209)
2. **Annulment** is a judicial action that seeks to abolish the existence of a marriage due to violations stipulated in the grounds for annulment in Article 45 of the Family Code. (Source: E.O. 209 and Black's Law Dictionary, 4<sup>th</sup> Edition)
3. **Nullity of Marriage** is a judicial action that seeks to declare the entire invalidity of a supposed, pretended, or attempted marriage, by reason of relationship or incapacity of parties or other impediments, which is obtained through a decree of Judicial Declaration of absolute Nullity of Marriage. ((Source: Black's Law Dictionary, 4<sup>th</sup> Edition)
4. **Legal Separation** is a judicial action that seeks the suspension of marriage for the separation of bed and board of the husband and wife. (E.O. 209)
5. **Child Custody** is a special proceeding that seeks to grant/award the care, custody, and control of each child taking into paramount consideration the best interest of the child, that no child under seven years of age shall be separated from the mother unless the court finds compelling reasons to do otherwise, taking into account all relevant considerations, especially the choice of the child over seven years of age, unless the parent chosen is unfit to take charge of the child by reasons of moral depravity or habitual drunkenness, etc. ( Source: E.O. 29)

### IV. General Policies:

1. Marriage is the foundation of the family and the inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation, except during the marriage within the limits provided in the Family Code of the Philippines, as amended, or E.O.209.
2. All shall be done to provide interventions to preserve and strengthen marriage as mandated and as indicated in programs and services such as marriage counseling, parents effectiveness service, family life development, etc. (E.O. 209)
3. In all questions regarding the care, custody, education and property of the child, his welfare shall be the paramount consideration. (PD 603)
4. The child is one of the most important assets of the nation. Every effort should be exerted to promote his/her welfare and enhance his opportunities for a useful and happy life. (PD 603)

5. The molding of the character of the child starts at home. Consequently, every member of the family should strive to make the home a wholesome and harmonious place as its atmosphere and conditions will greatly influence the child's development. (PD 603)

## V. Roles and Responsibilities

### A. Roles

The following are the usual roles and responsibilities of the social workers in handling cases of annulment, nullity of marriage and child custody.

Phases of Management	Role of Social Worker
Pre-filing or upon filing of case	<p><b>Advocate</b> – The Social Worker tries to influence in the client's interest another party, who usually possesses same authority or power over the client.</p> <p><b>Mediator</b> – The social worker acts as conciliator or intermediary between and among the client and the other parties in order to arrive at a common ground to resolve disputes.</p>
During Court Proceedings	<p><b>Enabler</b> – This will involve activities of the social worker that will help clients to find and develop coping strengths and resources within themselves to resolve their problems. The worker performs a supporting and empowering function to enable the client to achieve the defined change.</p>
Upon/After Judgment	<p><b>Counselor / Therapist</b> – The Social Worker's goal is the restoration, maintenance, or enhancement of the client's capacity to adapt or adjust to his/her current reality. This is achieved through the provision of services on an individual or group basis, to provide emotional support through an enabling relationship with the client.</p> <p><b>Social Broker</b> – The social worker connects the client to needed services in the community. She engages in a variety of activities as helper, interpreter, facilitator, expeditor, escort or negotiator, to ensure timely service delivery to the client.</p>

The roles of the social workers may be interchangeably needed in the various procedures depending on the situation/condition of the petitioner/respondent and the child/ren.

The social worker shall have its paramount consideration the preservation and strengthening of marriage and the best welfare and interest of the child when a case is referred to the Department, LGU and Court. She/He should first pursue reconciliation. However, after counseling, where the options and consequences of the case have been discussed and understood by the couple and other concerned persons, and when they are fully decided to pursue the case in court, then she/he will refer the party to file the case in court.

## **B. Responsibilities**

If all efforts exhausted by the social worker to prevent the separation served futile, the social worker shall ensure that the decision arrived at by the couple is for the family's best welfare and interest and that all efforts shall be done to cushion the effects on the child/ren, if any.

### **1. Annulment and Nullity of Marriage**

#### **1.1 Interview and Assessment**

Upon receipt of court order and petition for annulment or nullity of marriage or referral from other concerned citizens the social worker shall send letter, within the day, to the respondent and petitioner for office interview and submission of the following required documents, as necessary and in certified true copy:

- Marriage Contract
- Birth Certificate
- Police/NBI Clearance
- Income Tax Return
- Certificate of Employment
- School Records
- Psychological Report
- Medical Report
- Character References
- Picture
- Documents on Assets/Properties
- Others

1.1.1 Conduct collateral interview/s with immediate persons known to the petitioner and respondent e.g., neighbors, relatives, employers, friends, etc. to validate gathered information within two (2) days.

- 1.2 Counseling - Conduct counseling and home visit to petitioner, respondent, and their children, in three (3) days or more as necessary, for psychosocial preparation.
- 1.3 Preparation and Submission of Social Case Study Report- Prepare and submit to the committing court within two (2) weeks upon receipt of referral unless the court prescribes the date of submission of the Social Case Study Report where the content and assessment is focused on the following:
  - Cause/Reasons for separation/annulment/nullity of marriage
  - Capability to fulfill marital obligation i.e. financial, sexual, psychological, emotional, spiritual.
  - Relationship with children, friends, employers, in laws, etc.
  - Decision making capacities
  - Attempts/efforts to reconcile
- 1.4 Act as Expert Witness - Appear in court to testify on the findings and efforts done on the case within one month after the court referral or as scheduled by the court
- 1.5 Monitor Case- Follow-up issuance of court decision within ninety (90) days as prescribed by law
- 1.6 After Care Services - Provide appropriate services to the child/ren to ensure smooth adjustment within six (6)months
- 1.7 Termination of Case - Prepare closing summary of case within one (1) day

## **B. Child Custody**

Cases of child custody may be an issue of both the petitioner or respondent and is usually filed separately in court. There are also instances where child custody is the only issue of the couple and they do not have plans to pursue annulment, nullity of marriage or legal separation.

### 1.1 Interview and Assessment

Upon receipt of court order or referral from concerned citizen the social worker shall send letter within the day to the respondent and petitioner for office interview and submission of the following required documents, as necessary:

- Marriage Contract
- Birth Certificate
- Police/NBI Clearance
- Income Tax Return

- Certificate of Employment
- School Records
- Psychological Report
- Medical Report
- Character References
- Picture
- Documents on Assets/ Properties
- Others

1.1.2 Conduct collateral interview/s with immediate persons known to the petitioner, respondent and the child/dren e.g., neighbors, relatives, employers, friends, school, etc. to validate gathered information within two (2) days

1.2 Counseling - Conduct counseling and home visit to petitioner, respondent, and the child/ren in three (3) days or more as necessary for psychosocial preparation

1.3 Preparation and Submission of Social Case Study Report - Prepare and submit to the committing court within two (2) weeks upon receipt of referral unless the court prescribes the date of submission of the Home(legal guardian or custodian)/Child Study Report where the content and focus of assessment is on the following:

- Developmental age behaviors and needs
- Feelings on the custody issues
- Person whom the child wants to stay with and why
- Child caring practices
- Mode of disciplining
- Parenting capabilities
- Financial capability of both parties
- Moral and spiritual dimensions of both parties

1.4 Act as Expert Witness - Appear in court to testify on the findings and efforts done on the case within one (1) month after the court referral or as scheduled by the court

1.5 Monitor Case

3.5.1 Conduct monitoring/follow-up visits to the child as directed by the court.

3.5.2 Follow-up issuance of court decision within ninety (90) days as prescribed by law

1.6 After Care Services - Provide appropriate services to the child/ren as necessary to ensure smooth adjustment within six (6) months

1.7 Case Termination - Prepare closing summary of case within one (1) day

**V. Decorum for Court Appearances of Social Workers**

1. Must be in proper business attire.
2. Must be on time.
3. Must be ready to present contents of social case study report prepared on the particular case, efforts done on the case and be ready to answer questions from the lawyers and judges.
4. Must act in accordance with the profession's code of ethics.

**VI. Training of Social Workers**

All social workers who will handle cases on annulment, nullity of marriage, legal separation, and child custody must have attended related trainings and/or has been accredited, to do the following:

1. Marriage Counseling
2. Child Protection
3. Case Management on Court Related Cases

**VII. Institutional Arrangements**

**A. DSWD**

**A. 1 Central Office**

1. The **Social Technology Bureau (STB)** shall periodically review to update this guidelines and develop areas for intervention for such cases, in coordination with the other units mentioned in this guidelines.
2. The **Program Management Bureau (PMB)** shall conduct quarterly monitoring and technical assistance to all regional offices in the implementation of this administrative order.
3. The **Social Welfare and Institutional Development Bureau (SWIDB)** shall:
  - Shall include orientation of this order in related trainings or seminars/workshops with regional directors and staff
  - Prepare training module and conduct training on this particular service with the PMB, STB, SB and/or Regional Offices, LGU and Court social workers as resource persons.
4. The **Standards Bureau (SB)** shall develop accreditation standards and conduct accreditation of social workers.



5. The **Policy Development and Planning Bureau** shall provide data banking and management for statistical and other reportorial requirements.

**A. 2 Field Office**

1. The **Field Office (FO)** shall act on all referrals on cases of annulment, nullity of marriage, or child custody referred by the court and other concerned individuals.
2. The **FO** shall coordinate/network with the Court and LGU social workers through an annual forum to discuss issues and concerns of cases of annulment, nullity of marriage, child custody and other similar cases.
3. The **FO** shall submit quarterly reports of cases handled/accomplishment to the **PMB** as basis for monitoring and technical assistance, copy furnish the **PDPB** for data management.

**B. Court Social Workers**

1. Act on cases referred by the court and other agencies.
2. Provide after-care services referred by the court and DSWD.

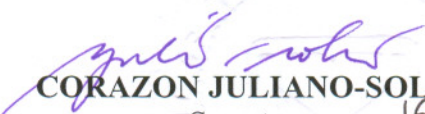
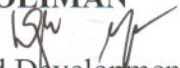
**C. Local Government Unit Social Workers**

1. Act on cases of referral from the court and other concerned citizens.
2. Conduct home study reports and after care services as requested by the court, DSWD, and other LGU social workers.

**VIII. Effectivity:**

This order takes effect immediately and supercedes previous issuances inconsistent herewith.

Signed this 11<sup>th</sup> day of May, 2005 in Quezon City.

  
**CORAZON JULIANO-SOLIMAN**  
Secretary   
Department of Social Welfare and Development

**Legal base for the information of the social workers:**

**A. Grounds for Annulment**

A marriage may be annulled for any of the following causes, existing at the time of the marriage (Article 45, Family Code):

1. That the party in whose behalf it is sought to have the marriage annulled was eighteen years of age or over but below twenty-one, and the marriage was solemnized without the consent of the parents, guardian or person having substitute parental authority over the party, in that order, unless after attaining the age of twenty-one, such party freely cohabited with the other and both lived together as husband and wife;
2. That either party was of unsound mind, unless such party after coming to reason, freely cohabited with the other as husband and wife;
3. That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband and wife;
4. That the consent of either party was obtained by force, intimidation or undue influence, unless the same having disappeared or ceased, such party thereafter freely cohabited with the other as husband and wife;
5. That either party was physically incapable of consummating the marriage with the other, and such incapacity continues and appears to be incurable; or
6. That either party was afflicted with a sexually transmissible disease found to be serious and appears to be incurable.

**Article 46. Any of the following circumstances shall constitute fraud referred to in Number 3 of the preceding Article:**

1. Non-disclosure of a previous conviction by final judgement of the other party of a crime involving moral turpitude;
2. Concealment by the wife of the fact that at the time of the marriage, she was pregnant by a man other than her husband;
3. Concealment of a sexually transmissible disease, regardless of its nature, existing at the time of the marriage; or

4. Concealment of drug addiction, habitual alcoholism or homosexuality or lesbianism existing at the time of the marriage.

#### **Who may file for annulment?**

Article 47 of the Family Code states that the action for annulment of marriage must be filed by the following persons and within the periods indicated herein: Please see attached annex A for Article 45 or Grounds for Annulment.

1. For causes mentioned in number 1 of Article 45 by the party whose parent or guardian did not give his or her consent, within five years after attaining the age of 21; or by the parent of the guardian or person having legal charge of the minor, at any time before such party reaches the age of 21;
2. For causes mentioned in number 2 of Article 45, by the sane spouse, who had no knowledge of the other's insanity; or by any relative, guardian or person having legal charge of the insane, at any time before the death of either party, or by the insane spouse during a lucid interval or after regaining sanity;
3. For causes mentioned in number 3 of Article 45, by the injured party, within five years after the discovery of the fraud,
4. For causes mentioned in number 4 of Article 45, by the injured party, within five years from the time the force, intimidation or undue influence disappeared or ceased;

For causes mentioned in numbers 5 and 6 of Article 45, by the injured party, within five years after the marriage.

#### **B. Absolute Nullity of Marriage**

The following are the grounds for which marriages may declared ab initio as stipulated in Chapter 3 of the Family Code of the Philippines, as amended, or Executive Order No. 209:

Article 35. The following marriages shall be void from the beginning.

1. Those contracted by any party below eighteen years of age even with the consent of parents or guardians;
2. Those solemnized by any person not legally authorized to perform marriages unless such marriages were contracted with either or both parties believing in good faith that the solemnizing officer had the legal authority to do so;
3. Those solemnized without license, (except those covered by the preceding Chapter);

- 4.Those bigamous or polygamous marriages not falling under Art 41;
- 5.Those contracted through mistake of one contracting party as to the identity of the other; and;
- 6.Those subsequent marriages that are void under Article 53.

Article 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization. (As amended by E.O.227)

Article 37. Marriage between the following are incestuous and void from the beginning, whether the relationship between the parties be legitimate or illegitimate:

- 1.Between ascendants and descendants of any degree; and
- 2.Between brothers and sisters, whether of the full or half blood

Article 38. The following marriages shall be void from the beginning for reasons of public policy:

- 1.Between collateral relatives, whether legitimate or illegitimate, up to the fourth civil degree;
- 2.Between step-parents and step-children;
- 3.Between parents-in-law and children-in-law;
- 4.Between the adopting parent and the adopted child;
- 5.Between the surviving spouse of the adopting parent and the adopted child;
- 6.Between the surviving spouse of the adopted child and the adopter;
- 7.Between an adopted child and a legitimate child of the adopter;
- 8.Between adopted children of the same adopter; and
- 9.Between parties where one with the intention to marry the other, killed that other person's spouse or his her spouse.

Article 39. The action of the defense for the declaration of absolute nullity of marriage shall not prescribe. (As amended by R.A.8533, as approved Feb. 23, 1998)

Article 40. The absolute nullity of a previous marriage may be invoked for the purposes of remarriage on the basis solely of a final judgement declaring such previous marriage void.

### **C. Child Custody**

The Family Code provides the following:

Article 213. In case of separation of the parents, parental authority shall be exercised by the parent designated by the court. The court shall take into account all relevant considerations, especially the choice of the child over seven years of age, unless the parent chosen is unfit.

No child under seven years of age shall be separated from the mother unless the court finds compelling reasons to do otherwise.

The Child and Youth Welfare Code (PD 603) provides the following:

Section A. Article 17. Joint Parental Authority. – The father and the mother shall exercise jointly just and reasonable parental authority and responsibility over their legitimate or adopted children. In case of disagreement, the father's decision shall prevail unless there is a judicial order to the contrary.

In case of the absence or death of their parent, the present or surviving parent shall continue to exercise parental authority over such children, unless in case of the surviving parent's marriage, the court, for justifiable reasons, appoints another person as guardian.

Article 18. Grandparents. – Grandparents shall be consulted on important family questions but they shall not interfere in the exercise of parental authority by the parents.

Article 19. Absence or Death of Parents. – Grandparents and in their default, the oldest brother or sister who is at least 21 years of age (Article 216 of the Family Code), or the relative who has actual custody of the child, shall exercise parental authority in case of absence or death of both parents, unless a guardian has been appointed in accordance with the succeeding provision.

Article 20. The court may, upon the death of the parents and in the case mentioned in Articles 328 to 322 of the Civil Code, appoint a guardian for the person and property of the child, on petition of any relative or friend of the family or the Department of Social Welfare.

The Supreme Court Rule on Commitment of Children provides the following:

Section 4. (o) Removal of Custody. – A motion to remove custody of a child may be filed by an authorized representative of the Department with knowledge of the facts against a child-placement or child-caring agency on the ground of neglect of such child as defined in Section 3 (e) of this Rule. The court shall set the motion for hearing with notice to the public prosecutor and the court-designated social worker. If the court finds after the hearing that the allegations of the motion have been established and that it is for the best interests and welfare of the child, the court shall issue an order removing him from the custody of another duly licensed child-placement or child-caring agency or individual.

In the same proceeding, the court may suspend or revoke the license of the agency or individual found guilty of such neglect depending upon the gravity or frequency of the offense.