

***Philippine Practice of Forensic Clinical Psychology in Marital Nullification:
From Client Assessment to Court Appearance*¹**

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Abstract

The dearth of documentation of forensic clinical psychology practice in Philippine cases of marital nullification, as seen from the lens of forensic clinical psychology, prompted the author-researchers to contribute their professional knowledge in their clinical practice and involvement in the forensic setting.

They cited their significant lived experiences in their professional practice of forensic clinical psychology, from sharing the methodology that they used from the intake and assessment of their clients, to their actual court appearance as expert witness. Then, they distinguished between contested and uncontested cases and identified as well their other roles and responsibilities in various contested and uncontested cases; they likewise elaborated on these roles and responsibilities.

Further, they shared their techniques on the routine cross-examination questions that they encountered, as they also underscored the usual mistakes that the other practitioners might have possibly committed. Still further, they accounted for the various acceptable practices in the area of expert witnessing.

Throughout this paper then, the two practicing forensic clinical psychologists made recommendations into the possible areas of best practices. They concluded that while it was their basic responsibility to do no harm to their clients, their loyalty to ferret out the truth occupied a preferential treatment in the hierarchy of their roles and responsibilities.

Keywords: forensic psychology, forensic assessment, nullification, expert opinion

¹ This article was culled from the earlier dissertation proposal of the first author in his doctoral studies at the University of Santo Tomas Graduate School, Manila, Philippines.

Introduction

The idea of marital nullification in the Philippine civil society resonated very strongly when it was initially introduced as an integral part of its family law. But even before it became a practice in Philippine civil society, marital nullification already brewed silently as part and parcel of the Roman Catholic Church's doctrinal tradition that had long been enshrined in its very canon.

It was only when the Family Code of the Philippines, the country's family law, introduced the concept of psychological incapacity that this civil society actually took notice of this practice as a very good alternative to divorce. Philippine society, being a predominantly Roman Catholic country, never allowed divorce to flourish in its territory in contrast to the other Roman Catholic countries where divorce already existed.

This then became the take off point for the practice of forensic psychology in the country. The services of clinical psychologists, including the authors of this paper, were skillfully engaged into by the spouses who underwent stormy and destructive marital relationships, and who needed to determine whether or not either or both of them was psychologically incapacitated to perform his or her essential marital obligations.

The essential marital obligations of these spouses, as defined in the Philippine family law, included the obligation to live together as husband and wife under one roof, the obligation to render mutual love, respect, support and loyalty for each other, and the obligation to refrain from engaging in any activity that would put his or her other spouse at the risk of death, danger, or injury (Family Code, 07 July 1987).

As the practice went on, the authors noted the dearth of documentation of forensic clinical psychology practice in Philippine cases of marital nullification, as seen from the lens of forensic psychology itself, and not from the usual legalities whose theoretical perspective had long set its foothold. They similarly underscored the common mistakes that forensic psychology practitioners often committed in the court arena. With these observations at hand, they then opted to share some of their rich clinical experiences in the court setting.

Scope and limitations

The present paper was specifically intended as a documentation of the actual practice of forensic psychology in marital nullification for Philippine psychologists. It did not intend to include the documentation of the practice of forensic psychiatry in the same area of marital nullification. Clearly, this documentation also combined both the discipline of psychology, which had been described as empirical and nomothetic, and the discipline of law, which had been characterized as *stare decisis* based and ideographic (Costanzo and Krauss, 2010).

The present documentation also strictly observed the meticulous requirements of confidentiality under the Rule on Violence Against Women and Their Children (19 October 2004) and under the Rule on the Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages (15 March 2003), so that the

identities of all the parties involved, including the women and children and the other forensic clinical psychologists, were made *in cognito*.

Marital nullification in forensic psychology

Forensic psychology referred to that specialized area of psychology that was concerned with anything, or to potentially anything, that had reference to the discipline of law. While forensic psychology was generally limited to the practice of psychology as it related to the legal system, this specialized area was further limited in the Philippines to the actual clinical practice of psychology in the courts.

The practice of the majority of the current forensic psychology professionals in the country initially took off from their practice in the area of marital nullity. Records in the Office of the Solicitor General, an agency of the Philippine government, revealed that the documented cases of marital nullity stood at 10,528 as of 2012 (Calonzo and Cayabyab, 2013).

This number then would have to be matched by the number of registered psychologists who practiced in the clinical setting. But then again, not every registered clinical psychology practitioner actually went to the courts and became a forensic clinical psychology expert witness. There were those who willingly did the psychological assessment on their client spouse, but were unwilling and even unprepared to engage in the forensic arena.

Bartol and Bartol (2008), meanwhile, stressed that this specialized area of psychology actually included both research and practice. It was for this reason that the author-researchers of this academic paper noted the scarcity of the documentation of the actual practice of forensic clinical psychology in the court setting. The limited forensic clinical psychologists who practiced, vis-à-vis the demand for them to handle the voluminous cases, must have also been the reason for this deficiency.

Historically, it was the Roman Catholic Church who captured the market for matrimonial annulment (Davidson and Ekelund, 1997). The Family Code's concept of a petition for the judicial declaration of nullity of marriage was, to say the least, a duplicate of the church's matrimonial annulment. With that in mind, we needed to know then, as forensic clinical psychology practitioners, whether or not the civil courts actually recognized the marital annulments resolved by the church; conversely, we also needed to know whether or not the church recognized the marital nullity that the civil courts resolved.

The response to these queries was readily answered by the very professionals who practiced in the forensic setting. Church annulments merely had a persuasive effect on the resolution of the civil cases of nullity. In short, the decree of annulment was only used for evidentiary purposes in resolving the civil cases of nullity. From the church's end, meanwhile, it was very unlikely that she even gave weight to these resolved civil cases of nullity, considering the moral authority over the civil authority on which she stood.

Meanwhile, the very concepts of nullity and annulment in the present civil society created a mix-up when lay people started to equate civil nullification with civil

annulment. As practitioners, we thought that it was quite undeniable that the framers of the country's family law actually thought of civil nullification and civil annulment of the marital union from two different contexts of reality.

Civil annulment was generally based on vitiated consent; whereas, civil nullity was generally based on psychological incapacity. Then, whenever civil annulment was granted to the spouses, the marital union between these spouses remained valid until such time when the very decree of annulment was handed down to them; whereas, whenever civil nullity was granted to the spouses, the actual effect was like no actual marital union took place, the marriage being void *ab initio*.

The psychological process in marital nullification

The psychological process in **Figure 1-A** and in **Figure 1-B** conceptually explained the psychological procedures used by the author-researchers from the time of the intake, to the time when they conducted the psychological assessment with their clients, to the time when they also generated the forensic mental health assessment report, and to the time when they personally appeared as expert witness in the courtroom.

Based on the illustrated conceptual diagram of the psychological procedures, both the petitioner and the respondent spouse could readily undertake the psychological assessment, and ideally, they should. But the reality in practice tended to indicate that there were so many instances when the respondent spouse did not appear for psychological assessment despite his or her receipt of the formal letter of invite from the forensic clinical psychologist.

In those cases when the respondent spouse did not appear, the psychological evaluation should still proceed and pursued to its logical end because the aggrieved petitioner spouse must not be held hostage by the lack of interest or by the indecision of the respondent spouse to appear and undertake the psychological assessment, especially if no valid reason was provided by the respondent spouse.

In the case of *Brenda B. Marcos v. Wilson G. Marcos* (19 October 2000), the Philippine Supreme Court stressed that the psychological evaluation by the forensic expert was not at all a *conditio sine qua non* for the validity of the marital nullification. The High Court raised the point that the validity of the nullification could still be established by the totality of the evidences presented at hand and not just by the lone psychological evaluation presented by the forensic clinical psychologist.

Now, whether or not the respondent spouse actually underwent the psychological assessment, the additional information especially from the corroborative accounts should still be collated. Both the empirical reviews and the actual practice, in the meantime, revealed that the corroborative accounts from the witnesses were heavily relied upon in the forensic setting. Accounts of at least two witnesses who had personal knowledge of the marital relationship of the spouses, including their personal knowledge of the spouses' premarital background, would be most ideal and useful.

Collating all the available data then was only done after both the spouses were psychologically assessed and after the corroborative accounts of their witnesses were

taken into consideration. It was only at this point then when the forensic clinical psychologist decided whether or not either or both the spouses were psychologically incapacitated. The decision to declare either or both of these spouses as psychologically incapacitated would then be documented in a forensic mental health assessment report, more popularly called as the psychological evaluation report.

The psychological report, together with the forensic clinical psychologist's judicial affidavit, would then be forwarded to the petitioner spouse's legal counsel, and eventually to the trial court. Upon submission of these documents, the forensic clinical psychologist later actually appeared in the trial court as expert witness, assuming that his or her credentials qualified and were accepted, as such, by the same trial court.

Figure 1-A

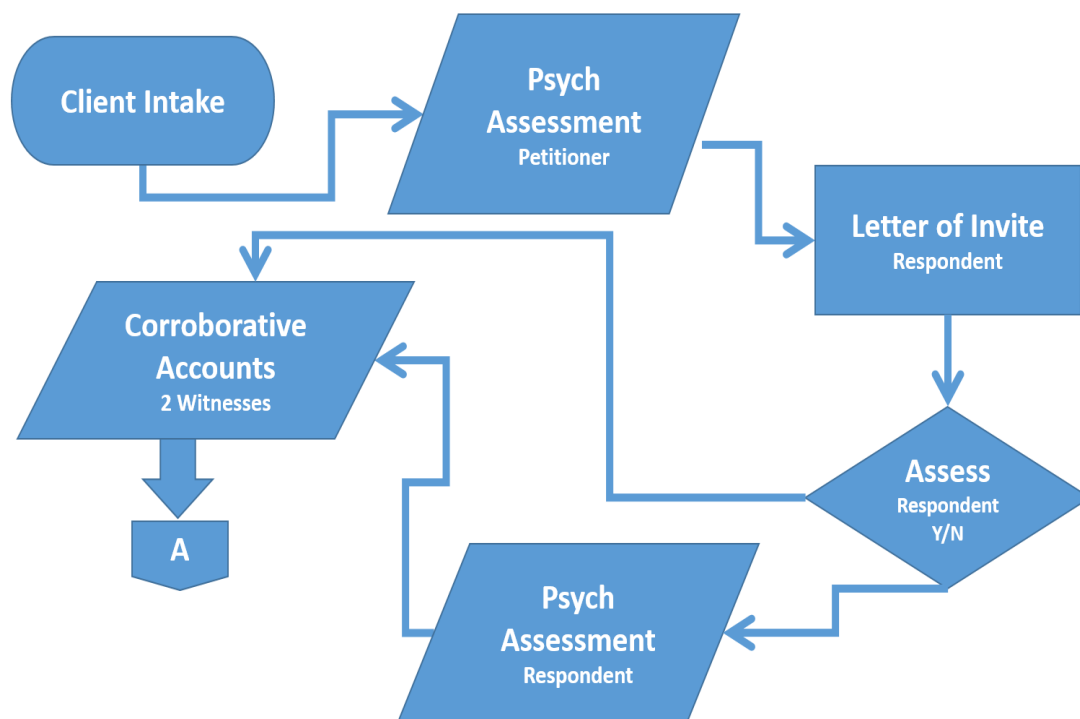
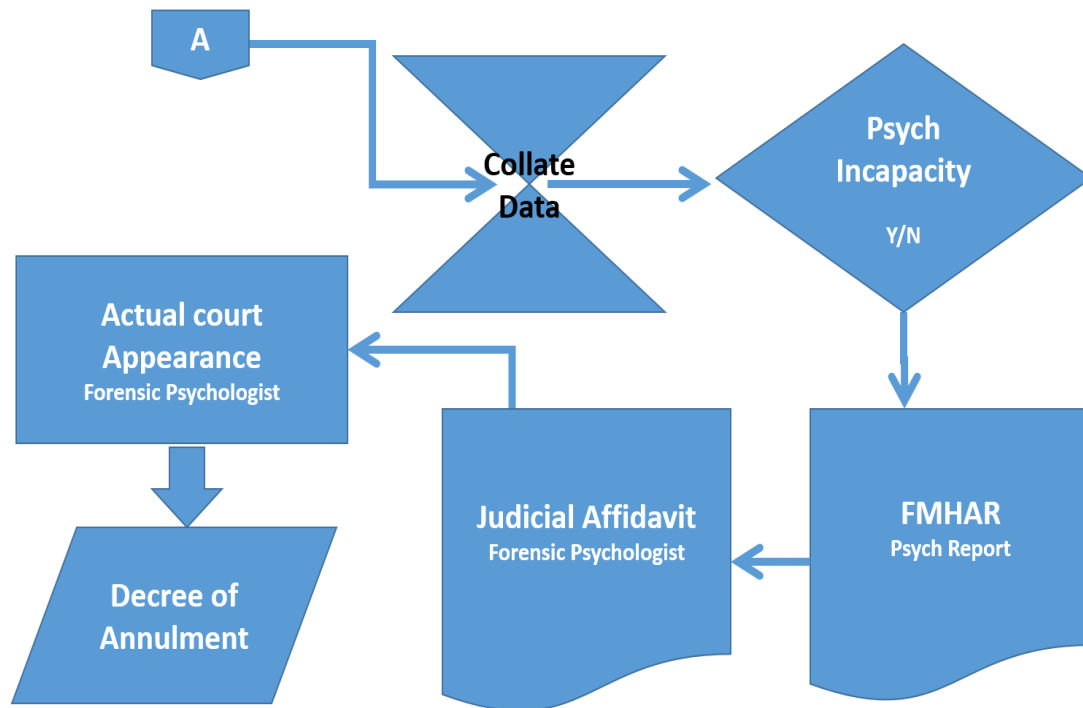


Figure 1-B



Contested versus uncontested cases in marital nullification

When the respondent spouse simply agreed to everything that was said in the petition or the respondent spouse failed to file an answer for whatever reason, the petition filed would be characterized as uncontested. If the respondent spouse, on the other hand, filed an opposition, then the petition was contested.

In instances of uncontested petitions, the court *a quo* could readily assign the public prosecutor to investigate the case for possible collusion. In addition, a representative from the Office of the Solicitor General would have the authority to investigate for possible collusion. This was so because under the country's family law, collusion between the spouses was frowned upon.

Contested cases, meanwhile, gave the forensic clinical psychology practitioner much leeway to charge higher professional fees. In most instances when the cases were referred by the petitioner spouse's legal counsel, it was this legal counsel who determined the professional fees to be paid to the forensic clinical psychology practitioner. In some other cases, the forensic clinical psychology practitioner advocated for the socialized scheme of charging professional fees; meaning, the amount charged was based on the client spouse's ability to pay. So that, if the client spouse did not have the resources, the case was handled *pro bono*, meaning, free of charge.

Contested cases similarly compelled the forensic clinical psychologist to be more rigid and stricter in the conduct of the psychological assessment. For instance, the

forensic clinical psychologist made sure that the assessment procedures used were Daubert and Frye compliant (Welch, 2006; Shapiro, Mixon, Jackson, and Shook, 2015).

Two of the more popular psychometric tests that had been identified as Daubert and Frye compliant were the Minnesota Multiphasic Inventory-2 (MMPI-2), the latest version of which was the MMPI-2-RF (Minnesota Multiphasic Inventory-2-Restructured Form), and the Millon Clinical Multiaxial Inventory-III (MCMI-III).

Projective techniques, such as the Rorschach Inkblot Test, the Thematic Apperception Test and the projective drawings, which had been highly criticized in the empirical literature as having low clinical utility (Lilienfeld, Wood, and Garb, 2000), would, in the meantime, continue to be used and allowed in the court setting by the trial court judges.

In the Philippine practice of forensic clinical psychology in marital nullification, the use of the projective techniques were actually combined with the more powerful tests such as the MMPI-2 or the MMPI-2-RF, and/or the MCMI-III. Collateral information was similarly utilized in addition to the aforementioned traditional psychometric tests and projective techniques.

Further, the inclusion of a locally normed test that specifically measured psychological incapacity – the Psychological Incapacity Rating Scale or PIRS (Ng and Apruebo, 2006) – would not only be most ideal, but would make the entire psychological assessment highly reliable and very credible.

The heavy reliance on a single psychological assessment procedure by some other forensic experts, whether it be a reliance on the use of a lone psychometric test or a lone projective technique, would likely bring about unreliable and doubtful results. In practice, the use of a battery of psychological tests, ideally combining both the psychometric test and the projective technique, tended to bring about a more reliable and credible result.

But following the Daubert, it was still the trial court judge as the “gate keeper” (Neufeld, 2005) who would have the final say in all of the earlier accounts that were made. The use of the general acceptability principle by the scientific community was also recognized by the trial courts. These empirical standards, which were earlier cited in *Rosendo Herrera v. Rosendo Alba* and *Hon. Nimfa Cuesta-Vilches* (15 June 2005) now appeared to have become part of Philippine jurisprudence.

The additional forensic documentary evidences utilized in support of the assessment in marital nullification included the use of the financial accounts of either or both the spouses, their Facebook, Twitter, Instagram and other social media accounts, their love letters for each other, and their travel documents, to name a few. It was, of course, still expected that forensic practitioners also earlier looked into the marriage certificate and the certificate or certificates of live birth of their children, if they had any at all.

Roles and responsibilities of the forensic clinical psychologists in marital nullification

Forensic clinical psychologists in marital nullity needed to educate their clients. They needed to educate their clients, at the outset, on the scope and limitations of the professional services to be rendered by them. Although most practitioners relied heavily on the so-called psychological contracts that had been unwritten, it would still be in the best interest of both parties to have the matter of the professional agreement in writing.

Possible contents of these professional service agreements with the client involved the requirement for the client to undertake the psychological assessment, including the obligation to undertake the battery of psychological tests, the obligation to disclose fully all clinically relevant facts and details, and the obligation to provide two competent and independent corroborative witnesses (*Republic of the Philippines v. Nestor Galang*, 06 June 2011).

Further, fellow forensic clinical psychologists should be educated on the fact that personality disorders were often seen by the authorities in most, if not all, of the cases of psychological incapacity, as the crux and the most common diagnosis for psychological incapacity. Psychological incapacity, being a legal concept, had long been equated by psychologists to personality disorders (Psychological Association of the Philippines, April 2010).

Fellow forensic clinical psychologists should then be aware of the landmark cases that were already laid down, including the case of *Leouel Santos v. Court of Appeals and Julia Rosario Bedia-Santos* (04 January 1995) and the case of *Republic of the Philippines v. Court of Appeals and Roridel Olaviano Molina* (13 February 1997). In the Santos case, the High Court stressed that the incapacity should be mental and not merely physical in nature; in Molina, the Court claimed that the incapacity should be both clinically or medically identified and proven by the experts.

The case of *Leonilo Antonio v. Marie Ivonne F. Reyes* (10 March 2006), meanwhile, took a slightly different path. While it cited the idea of Paranoid Personality Disorder as the crux of the psychological incapacity of the respondent-wife, it similarly emphasized on her pathological lying as it gave a heavy weight on the opinion and conclusion of Dr. Arnulfo V. Lopez with regard to the wife's "fantastic ability to invent and fabricate stories and personalities."

Ackerman (2010) declared that forensic clinical psychologists should also educate the attorneys, not be the other way around. They should do so, for instance, in matters involving the technical nature of personality disorders. They should similarly educate the trial courts that forensic clinical psychologists actually fulfilled the role of *amicus curiae* or "friend of the court" (Barsky, 2012). As such, their primordial responsibility was to help the trial court arrive at the truth.

The cross-examination of the forensic clinical psychologist in marital nullification

Before the forensic clinical psychologist's appearance in court, the supposed forensic clinical psychology expert would be required to submit his or her judicial affidavit, which would then serve as his or her direct examination testimony in the trial court proceedings (Judicial Affidavit Rule, 04 September 2012), provided that he or she qualified as such and his or her testimony would not at all be impeached. The cross-examination would then ensue.

Brodsky (2013) explained that the cross-examination, which would be extracted from the forensic clinical psychology expert witness' direct examination testimonies, was aimed at devaluing and discrediting his or her accounts. Since the cross-examination was really intended to debase his or her accounts, the expert witness should not then expect a giveaway question that readily allowed him or her to escape scot-free from the adversarial nature of the trial court's cross-examination.

When the question propounded during the cross-examination was categorical, the forensic clinical psychologist should not respond in a vacillating manner, but should answer categorically with a yes or a no. But when the question asked could not, however, readily be answered categorically, Brodsky suggested that the forensic clinical psychology expert simply both admit and deny his or her response. That would mean initially admitting the dependent clause and later on denying the independent clause of his or her statement.

In practice, the forensic expert witness could also go as far as directly asking the trial court's permission to be allowed to qualify his or her response by saying, "Your Honor, may I please be allowed to qualify my answer?" If the trial court judge agreed, then the forensic clinical psychologist could go on with his or her elaboration initially and without immediately affirming or negating the rigid cross-examination question that was propounded.

Then, when the issue of the cross-examination centered on the idea that the forensic clinical psychologist was a mere "hired gun" or a professional who was paid with a handsome amount to favor his or her client's cause, the forensic expert could then readily point to the fundamental principles of his or her impartiality. He or she could then cite his or her status as an *amicus curiae* or a friend of the court whose loyalty belonged to the court who first and foremost stood for the truth.

Conclusions

The practice of forensic clinical psychology in marital nullification, being unique in Philippine society, actually enhanced the area of research in forensic psychology which to date continued to be deficient. As cases of marital nullification continued to increase, so did the need to have more clinical psychologists in the forensic setting remained.

In the psychological assessment of their clients, the forensic clinical psychologists' foremost responsibility was to do them no harm. There were, however, legally recognized activities that resulted in this harm, such as when they declared in their

psychological evaluation reports that either or both of the spouses was psychologically incapacitated to perform his or her essential marital obligations.

Then during their actual court appearance as expert witness when their responsibility to their clients would be put to issue vis-à-vis their loyalty to the courts, the experience of these forensic clinical psychologists taught them that they should lay down the very foundations of their impartiality and that they should categorically claim that their loyalty to the court to ferret out the truth occupied a preferential treatment in the hierarchy of their roles and responsibilities as forensic clinical psychologists.

Considering all of the above, the authors of this academic paper then thought that, as forensic clinical psychology practitioners and researchers, it was imperative for the current set of forensic clinical psychology practitioners to motivate the rest of those in the clinical division to get into the practice and help in the research and documentation of the Philippine practice on marital nullification in forensic clinical psychology.

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