



## **National Conference for the Revision of the Rules of Civil Procedure**

# **First Draft of the Revised Rules of Civil Procedure**

**20 May 2013**  
Manila, Philippines



## EDITORS' NOTE:

The work contained in the next 231 pages shall be referred to as the **First Draft of Revised Rules of Civil Procedure**. It is a product of the Core Committee of the National Conference for the Revision of the Rules of Civil Procedure and their respective Topical Working Groups (TWGs). The Core Committee has been working with the University of the Philippines Law Center, the Integrated Bar of the Philippines, and the Philippine Judicial Academy to create this draft and make it accessible to the public.

Enclosed in parentheses at the end of each rule name, is either the letter “N” or “R” with a number. N signifies that the rule is new. While R signifies that it is an amendment of a current rule. The number refers to its current number in the Rules of Civil Procedure. If a rule has simply been amended, the changes to the individual sections are emphasized in bold letters. At the end of each section, its original section number is indicated. If the number is followed by an “a” this means the section has been amended. If the entire rule is new, the bold fonts are not used. Rest assured that any inconsistencies in the formatting, numbering, and cross-referencing will be resolved before the Final Draft of the Revised Rules of Civil Procedure is released in July 2013.

A primer on these changes accompanies the **First Draft** and can be found in a separate file.

Any comments, objections, and suggestions on the substance of the **First Draft** will be taken into consideration and tackled during the next round of TWG meetings. The **Second Draft of the Revised Rules of Civil Procedure** will be presented to the delegates of the National Conference for the Revision of the Rules of Civil Procedure. This will be held on 27-30 June 2013 at the Philippine Judicial Academy Training Center, Tagaytay, Philippines.

Finally, the **Final Draft** will be refined after the National Conference and presented to the Supreme Court *En Banc* for approval.

On the organization of these rules, the Rules should be collated in the most logical manner possible. The rules are grouped under titles that would make the most sense to an average user.

Since the scope of these revisions does not extend to Special

Proceedings, Criminal Procedure, etc. the most that can be done is to allot a Title for these particular rules. This way if and when those Rules are eventually updated or revised, the court, the publishers, and the rules' users may simply slip these new rules in without disrupting the numbering or flow of the other rules.

In preparation for the possible revisions of these rules, it is also suggested that each title restart the numbering of its rules such that each title will have its own Rule 1, 2, 3, etc.

It is also proposed that special rules such as those governing drugs cases, land registration cases, etc. be lifted from the law and transposed to separate titles in an orderly fashion. All irrelevant provisions of the law should be excluded. The titles listed above are by no means exhaustive and simply represent the most commonly used provisions of law as experienced by certain trial court judges. Summary Procedure and Small Claims Court rules should also be transposed to their respective titles.

All these rules would be collectively known as the Philippine Code of Procedure.





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## TITLE I: GENERAL PROVISIONS

### Rule 1

#### GENERAL CONSIDERATIONS (R1)

**SECTION 1.1. *Title of the Rules.*** — These Rules shall be known as the **2013 Rules of Civil Procedure. (1a)**

**SEC. 1.2. *Objective.*** — The overall objective of these rules is the attainment of justice in all civil actions by ensuring that:

- (a) **the parties are placed on equal footing;**
- (b) **the impartiality of the courts is guarded and assured;**
- (c) **the hearing and resolution of cases is expedited;**
- (d) **the costs are reduced;**
- (e) **the cases are resolved or settled before they are tried through alternative dispute resolution (ADR) such as negotiation, mediation, judicial dispute resolution (JDR) and/or arbitration;**
- (f) **when trial is inevitable, the cases are speedily heard and justly decided;**
- (g) **the court's time and resources are wisely distributed in proportion to**
  - 1. **the amounts claimed,**
  - 2. **the complexity of the issues raised, and**
  - 3. **the public interest involved.**
- (f) **the costs of litigation are rationalized. (n)**

**SEC. 1.3. *Role of counsel.*** — A counsel shall not do any falsehood, and shall observe the rules of procedure, and not misuse them to defeat the ends of justice. (n)

**In civil cases, a counsel shall encourage a client to avoid, end or settle the controversy if it will admit of a fair settlement. (n)**

**SEC. 1.4. *Role of judges.*** — **Judges shall act with integrity, diligence and competence.**

**In civil cases, the judge shall exert every effort to bring the parties to a settlement before proceeding to hear and decide the case. (n)**

**SEC. 1.5 *Cases governed.*** — These Rules shall govern the procedure to be observed in actions, civil or criminal and special proceedings.

- (a) A civil action is one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong,

A civil action may either be ordinary or special. Both are governed by the rules for ordinary civil actions, subject to the specific rules prescribed for a special civil action.

- (b) A criminal action is one by which the State prosecutes a person for an act or omission punishable by law.
- (c) A special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact. (3)

**SEC. 1.6. *Applicability.*** — These Rules shall uniformly apply to all trial courts. They shall also apply in suppletory character to cases or proceedings covered by special rules. **They shall not, however, apply in a suppletory character to the special rules on alternative dispute resolution. (2a, R5)**

**SEC. 1.7. *Construction.*** — The Rules shall be **construed to achieve its objectives. (6a)**

## TITLE II: EFFICIENT PRACTICES

### Rule 1

#### EFFICIENT USE OF PAPER (N)

**SECTION 1.1.** *Court Papers, defined.* — Court papers refer to (a) all papers that parties address to the court, including pleadings, motions, oppositions, manifestations, and memoranda and (b) all papers emanating from the court, including decisions, orders, notices, reports, minutes, and transcripts of proceedings. (n)

**SEC. 1.2.** *Prescribed formats.* — All court papers shall observe the following format requirements:

- (a) Typed single-spaced with 1.5 inches between paragraphs, using an easily readable font style of the party's choice in font size 14 white paper, except that court papers emanating from the court and its personnel shall uniformly use the Times New Roman font face; and
- (b) A left hand margin of 1.5 inches from the edge; top margin of 1.2 inches from the edge; right margin of 1.5 inch from the edge; and bottom margin of 1.0 inch from the edge, with each page numbered consecutively at the bottom.

**SEC. 1.3.** *Copy to be filed and served.* — Unless otherwise directed by the court, a party needs to file only one original of his or her court paper and serve one copy each on the adverse party or parties as well as on the other parties to the case. Parties represented in common by the same counsel shall be served with only one copy through that counsel. The copy served on a party need not include annexes that emanate from such party. (n)

### Rule 2

#### EFFICIENT USE OF COURT TIME (N)

**SECTION 2.1.** *Page limitation.* — A motion, an opposition to it, and a reply as well as trial memoranda, positions papers, and similar court papers

that embody arguments and authorities in support of a position taken by a party on an issue or issues shall as a rule not exceed twenty (20) pages, excluding the caption, table of contents, signature page, annexes, and appendices.

**SEC. 2.2. *Summary when required.*** — A party who files more than twenty (20) pages of such paper shall accompany the same with a clear and concise summary of its contents. The summary shall consist of not more than twenty percent of the total number of pages of the main paper. A fraction of a page summary after computation shall be considered as one page.

**SEC. 2.3. *Sanction for non-compliance with requirements.*** — Should a party fail to comply with the requirement of page limitation and summaries, the Court shall cite him or her for violation of the rule and shall consider the erring court paper not filed unless the party pays within five (5) days from notice a fine of not less than P 1,000.00 nor more than P 5,000.00 at the discretion of the court.

### Rule 3

#### PRESCRIBED FORMS AND SAMPLE COURT PAPERS (N)

**SECTION 3.1. *Prescribed Forms.*** — A party must, when forms are mandated for certain court papers, use such forms for the preparation and filing of the same. The prescribed forms, covered by a list, are found in Appendix A of these Rules. Soft or electronic copies of the same shall be made available at the Supreme Court website. The party who fails to use the prescribed form when required assumes the risk of the denial of any relief he or she or she seeks if the court paper he or she or she files lacks the required information, element, or detail.

**SEC. 3.2. *Other forms.*** — To ensure compliance with essential technical requirements for certain papers that are filed in court, samples of such papers are found in Appendix B for use by the parties. These are, however, mere samples. They must be adjusted to the facts and issues peculiar to each case, with the party assuming full responsibility for their proper use. (n)

## Rule 4

### SIMPLE AND JUDICIAL AFFIDAVITS (N)

**SECTION 4.1.** *Simple affidavit, defined; uses.* — A simple affidavit is a statement under oath executed by a person to attest to the truth of the facts he or she or she states in such affidavit. It is assumed that the affiant read and understood the contents of his or her affidavit and solely owns responsibility for its execution and use. Unless the rules require the submission of a judicial affidavit, only simple affidavits need be submitted.

**SEC. 4.2.** *Judicial affidavit, defined.* — A judicial affidavit is the recorded examination under oath of a witness in an action or proceeding in court. The examination may be conducted only by a lawyer or by someone acting under a lawyer's supervision.

A judicial affidavit shall take the place of a witness' direct testimony in all court actions and proceedings requiring such direct testimony.

**SEC. 4.3.** *Contents of judicial affidavit.* — The judicial affidavit of a witness shall be prepared in the language known to him or her and, if not in English or Filipino, accompanied by a translation in English or Filipino. It 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, fully conscious that he or she or she does so under oath, and that he or she or she may face criminal liability for false testimony or perjury;
- (d) Questions asked of the witness and his or her corresponding answers, consecutively numbered, that:
  1. Show the circumstances under which the witness acquired the facts upon which he or she or she testifies;

2. Elicit from him or her those facts which are relevant to the issues that the case presents; and
3. Identify and mark as exhibits 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 or 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.

(g) 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 faithfully recorded or caused to be recorded the questions asked of the witness and the corresponding answers that the latter gave; and
2. Neither the affiant nor any other person then present or assisting him or her instructed the witness to lie or suppress evidence or present fake documents regarding and in connection with the latter's answers.

The attesting lawyer may, in lieu of swearing to the truth of his or her attestation before a notary public or authorized officer, make the attestation under his or her oath as a lawyer.

**TITLE \_\_\_: (PROPOSED TITLE ON) JURISDICTION****Rule \_\_\_****JURISDICTION OF TRIAL COURTS OVER CIVIL ACTIONS (N)**

**SECTION 1.1.** *Jurisdiction, in general.* – Jurisdiction is conferred by law. (n)

**SEC. 1.2.** Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts, Metropolitan Trial Courts in Cities, and Municipal Circuit Trial Courts in Civil Cases. — **Metropolitan Trial Courts, Metropolitan Trial Courts in Cities, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:**

- (a) Exclusive original jurisdiction over civil actions and probate proceedings, testate and intestate, including the grant of provisional remedies in proper cases, where the value of the personal property, estate, or amount of the demand does not exceed Three Hundred Thousand Pesos (₱300,000.00) or, in Metro Manila where such personal property, estate, or amount of the demand does not exceed Four Hundred Thousand Pesos (₱400,000.00) exclusive of interest damages of whatever kind, attorney's fees, litigation expenses, and costs, the amount of which must be specifically alleged: Provided, That where there are several claims or causes of action between the same or different parties, embodied in the same complaint, the amount of the demand shall be the totality of the claims in all the causes of action, irrespective of whether the causes of action arose out of the same or different transactions;
- (b) Exclusive original jurisdiction over cases of forcible entry and unlawful detainer: Provided, That when, in such cases, the defendant raises the question of ownership in his or her pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved

only to determine the issue of possession.

(c) Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs: Provided, That value of such property shall be determined by the assessed value of the adjacent lots. (As amended by R. A. No. 7691; n)

**SEC. 1.2. *Delegated jurisdiction in cadastral and land registration cases.*** — Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts may be assigned by the Supreme Court to hear and determine cadastral or land registration cases covering lots where there is no controversy or opposition, or contested lots the where the value of which does not exceed One hundred thousand pesos (₱100,000.00), such value to be ascertained by the affidavit of the claimant or by agreement of the respective claimants if there are more than one, or from the corresponding tax declaration of the real property. Their decisions in these cases shall be appealable in the same manner as decisions of the Regional Trial Courts. (As amended by R. A. No. 7691; n)

**SEC. 1.3. *Special jurisdiction in certain cases.*** — In the absence of all the Regional Trial Judges in a province or city, any Metropolitan Trial Judge, Municipal Trial Judge, Municipal Circuit Trial Judge may hear and decide petitions for a writ of habeas corpus or applications for bail in criminal cases in the province or city where the absent Regional Trial Judges sit. (n)

**SEC. 1.4. *Summary procedures in special cases.*** — In Metropolitan Trial Courts and Municipal Trial Courts with at least two branches, the Supreme Court may designate one or more branches thereof to try exclusively forcible entry and unlawful detainer cases, those involving violations of traffic laws, rules and regulations, violations of the rental law, and such other cases requiring summary disposition as the Supreme Court may determine. The Supreme Court shall adopt special rules or procedures applicable to such cases in order to achieve an expeditious and inexpensive

determination thereof without regard to technical rules. Such simplified procedures may provide that affidavits and counter-affidavits may be admitted in lieu of oral testimony and that the periods for filing pleadings shall be non-extendible. (n)

**SEC. 1.5. *Regional Trial Court jurisdiction in civil cases.*** — Regional Trial Courts shall exercise exclusive original jurisdiction:

- (a) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;
- (b) In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos (₱20,000.00) or for civil actions in Metro Manila, where such value exceeds Fifty thousand pesos (₱50,000.00) except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts;
- (c) In all actions in admiralty and maritime jurisdiction where the demand or claim exceeds Three Hundred Thousand pesos (₱300,000.00) or, in Metro Manila, where such demand or claim exceeds Four hundred Thousand Pesos (₱400,000.00);
- (d) In all matters of probate, both testate and intestate, where the gross value of the estate exceeds Three Hundred Thousand Pesos (₱300,000.00) or, in probate matters in Metro Manila, where such gross value exceeds Four Hundred Thousand Pesos (₱400,000.00);
- (e) In all actions involving the contract of marriage and marital relations;
- (f) In all cases not within the exclusive jurisdiction of any court, tribunal, person or body exercising jurisdiction or any court, tribunal, person or body exercising judicial or quasi-judicial functions;
- (g) In all civil actions and special proceedings falling within

the exclusive original jurisdiction of a Juvenile and Domestic Relations Court and of the Courts of Agrarian Relations as now provided by law; and

- (h) In all other cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs or the value of the property in controversy exceeds Three Hundred Thousand Pesos (₱300,000.00) or, in such other cases in Metro Manila, where the demand, exclusive of the above-mentioned items exceeds Four Hundred Thousand Pesos (₱400,000.00). (As amended by R. A. No. 7691)

**SEC. 1.6. *Original jurisdiction in other cases.*** — Regional Trial Courts shall exercise original jurisdiction:

- (a) In the issuance of writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction which may be enforced in any part of their respective regions; and
- (b) In actions affecting ambassadors and other public ministers and consuls.

**SEC. 1.7. *Appellate jurisdiction.*** — Regional Trial Courts shall exercise appellate jurisdiction over all cases decided by Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts in their respective territorial jurisdictions. Such cases shall be decided on the basis of the entire record of the proceedings had in the court of origin and such memoranda and/or briefs as may be submitted by the parties or required by the Regional Trial Courts.

**SEC. 1.8. *Special jurisdiction to try special cases.*** — The Supreme Court may designate certain branches of the Regional Trial Courts to handle exclusively criminal cases, juvenile and domestic relations cases, agrarian cases, urban land reform cases which do not fall under the jurisdiction of quasi-judicial bodies and agencies, and/or such other special cases as the Supreme Court may determine in the interest of a speedy and efficient administration of justice.

**SEC. 1.9. *Special Rules of Procedure.*** — Whenever a Regional Trial Court takes cognizance of juvenile and domestic relations cases and/or

agrarian cases, the special rules of procedure applicable under present laws to such cases shall continue to be applied, unless subsequently amended by law or by rules of court promulgated by the Supreme Court.

## TITLE IV: PROCEDURE IN TRIAL COURTS

### Rule 1

#### CONDITIONS TO ACTION (N)

**SECTION 1.1.** *Conditions to filing.* — Unless otherwise provided by these rules, no action may be filed in court unless accompanied by:

- (a) Proof of receipt by defendant of a prior written demand from plaintiff,
- (b) Written proof of a failed effort to meet and negotiate a settlement between the parties; and
- (c) a certification that a subsequent submission of the dispute to mediation by a neutral party has also failed.

Where the dispute relates to a matter that is not allowed by law to be settled or compromised, the initiatory pleading shall contain a statement to such effect, and cite the specific provision of law relied upon, without prejudice to the authority of the court to subsequently direct the parties to submit to ADR any related issues or matters for which settlement or arbitration is not prohibited.

**SEC 1.2.** *Written demand and offer to meet.* — The plaintiff must before filing an action write the defendant a letter, demanding satisfaction of his or her specified claim or claims and seeking a meeting between the parties at an acceptable place, with a suggestion as to date and time, for the purpose of discussing the possibility of settlement and avoiding court action through negotiation. A period of at least ten (10) days shall be given to the other party to respond to the demand.

Should the plaintiff or the defendant regard such a direct meeting inadvisable because of some personal reason or deep personal enmity between them, the party shall in writing designate counsel or a representative to attend the meeting with full authority to negotiate and agree to the terms of any settlement.

**SEC. 1.3.** *Counterdemand.* — The court shall not entertain any counterclaim without proof that the defendant made a prior written counter

demand upon the plaintiff and unless the defendant declares that he or she or she or his or her representative brought up such counter demand in a settlement meeting with the plaintiff or his or her representative and that he or she or she further took part in the submission of their dispute to any of the alternative dispute resolutions mentioned in Section 1.4. below.

**SEC. 1.4. *Alternative dispute resolution.*** — Should there be no favorable response or no response at all to the demand, the aggrieved party must submit the proposed action for alternative dispute resolution through any two of the following modes:

- (a) a negotiation between the parties and/or counsel to settle or resolve the dispute;
- (b) a mutually acceptable neutral third-party or mediator, including but not limited to council of elders, tribal council, traditional leaders, and the like, as well as Legal Education Board-accredited law student interns, a law school legal aid unit, an Integrated Bar of the Philippines legal aid service, or any registered non-governmental organization dedicated to settling disputes amicably;
- (c) barangay conciliation, pursuant to R.A. No. 7160, as amended;
- (d) through the Philippine Mediation Center for the pre-filing stage;
- (e) alternative dispute resolution (other than arbitration) through the Office of Alternative Dispute Resolution, other authorized agencies, other ADR providers chosen by the parties; and
- (f) other similar modes of alternative dispute resolution.

**SEC. 1.5. *Exceptions.*** — The requirements of prior written demands and submission to mediation shall not apply:

- (a) Where the law or the rules prohibit as a matter of public policy, a negotiated settlement of the dispute between the parties; or
- (b) When the plaintiff's action urgently requires immediate judicial relief as when the plaintiff, acting in good faith,

applies for a temporary restraining order or a writ of preliminary injunction, a preliminary attachment, a replevin order, or receivership, unless in the meantime the court has granted or denied the application for such provisional remedy.

In the latter cases, the court may nonetheless direct the parties to submit to alternative dispute resolution pending further action on their cases. When claiming the exception, the plaintiff has the burden of proving his entitlement to such exception. An application for a provisional remedy plainly to avoid the requirements of prior demand and submission to alternative dispute resolution shall be ground for dismissal of the complaint or the counterclaim.

**SEC. 1.6. *Deposit of settlement Agreement.*** —Any party to a negotiation, conciliation, or mediation that is not court annexed may deposit with the Clerk of court of the Regional Trial Court where any of the parties who is an individual resides or the principal place of business of the corporation or partnership in the Philippines is located or in the National Capital Region, the written settlement agreement between the parties which resulted from the negotiation, conciliation or mediation, the registration and enforcement of such settlement agreement shall be governed by the special rules on alternative dispute resolution

**SEC. 1.7. *Effect of non-compliance.*** — No civil case, except as provided above, shall be filed in court without first undergoing any two modes of ADR. (n)

**SEC. 1.8. *Commencement of Action.*** — A civil action is commenced by the filing of the original complaint in court accompanied by the payment of 50% of the prescribed docket fees.

**The balance of 50% shall be paid within ten (10) days from the termination of preliminary conference proper without settlement of the dispute. Failure to pay the balance shall result in the dismissal of the action.**

**If an additional party is impleaded in a later pleading, the action is commenced with regard to that party on the date of the filing of such later pleading, even if the court denies the motion for the pleading's admission.**

**A motion to sue as an indigent must accompany the initiatory pleading, when proper, and be resolved by the Executive Judge prior to acceptance of the case and docketing. (5a, R1)**

## **Rule 2**

### **CAUSE OF ACTION (R2)**

**SECTION 2.1. *Ordinary civil actions, basis of.*** — Every ordinary civil action must be based on a cause of action existing, not just at the time of filing of the complaint, but at all stages of litigation. (1a)

**SEC. 2.2. *Cause of action.*** — A cause of action is an act or omission of one party in violation of the legal right or rights of the other. Its elements are:

- (a) a right in favor of plaintiff by whatever means and under whatever law it arises or is created;
- (b) an obligation on the part of the named defendant to respect or not to violate the right; and
- (c) an act or omission on the part of defendant violative of the right of plaintiff or constituting a breach of an obligation to the latter. It is only when the last element occurs that a cause of action arises. (2a)

**SEC. 2.3. *Splitting a single cause of action; effect of.*** — If two or more suits are instituted on the basis of the same cause of action, the filing of one, **or a dismissal with prejudice** or a judgment upon the merits in any one is a ground for the dismissal of the others. (4a)

**SEC. 2.4. *Joinder of causes of action.*** — A party **shall plead**, in the alternative or otherwise, **all causes of action existing** against **the other** party, subject to the following conditions:

- (a) The party joining the causes of action shall comply with the rules on joinder of parties;
- (b) The joinder shall not include special civil actions or actions governed by special rules;
- (c) Where the causes of action are between the same parties

but pertain to different venues or jurisdictions, the joinder may be allowed in the Regional Trial Court provided one of the causes of action falls within the jurisdiction of said court and the venue lies therein; and

- (d) Where the claims in all the causes of action are principally for recovery of money, the aggregate amount claimed shall be the test of jurisdiction.

Failure to plead all the above causes of action existing at the time of filing shall result in a waiver of the cause of action not pleaded. (5a)

**SEC. 2.5. Misjoinder of causes of action.** — Misjoinder of causes of action is not a ground for dismissal of an action. A misjoined cause of action may, on motion of a party or on the initiative of the court, be severed and proceeded with separately. (6a)

### Rule 3

#### PARTIES TO CIVIL ACTIONS (R3)

**SECTION 3.1. Plaintiff and defendant.** — Only natural or juridical persons **capacitated under the law**, or entities authorized by law may be parties in a civil action.

The term “plaintiff” shall refer to the **claimant**. The term “defendant” shall refer to the **responding party**. (1a)

**SEC. 3.2. Parties in interest.** — A real party in interest is the party who stands to be benefited or injured by the judgment in the **action**.

Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest. **When the name of a necessary party is unknown, such party may be sued as the unknown plaintiff or defendant until the party's identity is ascertained.**

In an action that seeks to pierce the corporate veil, the principal and the alter ego or business conduit shall both be impleaded as parties.

**Should there be a transfer of interest after the action has been filed, the action may, upon motion and court approval, be continued by**

**or against the original real party in interest, the transferee, or both. (2a)**

**SEC. 3.3. *Representatives as parties.*** — Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his or her or her own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal.

**In case the representative dies or is otherwise rendered incapacitated after the filing of the action, the counsel or the principal shall notify the court, within 30 days from knowledge, of such death or incapacity and the appointment by the principal of a new representative, or the intention to personally continue the action. (3a)**

**SEC. 3.4. *Spouses as parties.*** — Husband and wife shall sue or be sued jointly, except as provided by law. (4a)

**SEC. 3.5. *Minor or incompetent persons.*** — A minor or a person alleged to be incompetent may sue or be sued, **provided that such person is represented by a parent**, a guardian, or if none, a guardian ad litem. (5a)

**SEC. 3.6. *Joinder of parties.*** — An action shall implead all parties necessary for the complete adjudication of the cause of action pleaded. Should the omission of a necessary party be discovered only after the filing of a responsive pleading through no fault of the plaintiff or defendant, as the case may be, the court shall order the inclusion, on its own initiative or upon motion.

The failure to comply with an order for inclusion of a necessary party, without justifiable cause, shall be a ground for the dismissal of an initiatory pleading, or in the case of a third-(or fourth-, etc.) party complaint, shall be deemed a waiver of the claim against such party.

**The misjoinder of parties shall not be a ground for dismissal of an action. Parties may be dropped or added by order of the court, on motion of any party or on its own initiative, at any stage of the action and on such terms as are just. Any claim against a misjoined party may**

**be severed and proceeded with separately.** (6,7,9,11a)

**SEC. 3.7. *Unwilling co-plaintiff.*** — If the consent of any party who should be joined as **plaintiff** cannot be obtained, **such party** may be made a **defendant** and the reason therefor shall be stated in the **initiatory pleading.** (10a)

**SEC. 3.8. *Class suit.*** — When the cause of action is one common to persons too numerous that it is impractical to join all as parties, the court may allow a representative number of the claimants to sue or defend on behalf of all sharing the common interest. With leave of court, any party shall have the right to join the class suit at any time before trial commences. (12a)

**SEC. 3.9. *Alternative defendants.*** — **When there is uncertainty against whom plaintiff** is entitled to relief, **plaintiff** may, in the alternative, join any or all of them as **defendants**, although a right to relief against one may be inconsistent with a right to relief against the other. (13a)

**SEC. 3.10. *Entity without juridical personality as defendant.*** — When two or more persons not organized as an entity with juridical personality enter into a transaction, they may be sued under the name by which they are generally or commonly known.

In the answer of such **defendant**, the names and addresses of the persons composing said entity must all be revealed. (15a)

**SEC. 3.11. *Death of party; duty of counsel.*** — Whenever a party to a pending action dies, and the claim is not thereby extinguished, **counsel shall**, within thirty (30) days from knowledge, inform the court of the death, **and** give the names and addresses of all **known** legal heirs or representatives. Failure of counsel to comply with his or her duty shall be a ground for disciplinary action.

The court shall order the **heirs to substitute the deceased** within a period of thirty (30) days from notice **of death**. The court may appoint a guardian ad litem for the minor heirs **within the same period**. **Once appointed, an executor or administrator shall substitute the deceased.**

**If despite notice, no heir or representative appears or is named by the counsel for the deceased party, the court may order the estate to substitute for the deceased.** (16a)

**SEC. 3.12. *Death or separation of a party who is a public officer.*** — When a public officer is a party in an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action may be continued and maintained by or against **the successor** if, within thirty (30) days after the successor takes office, it is satisfactorily shown, **upon motion and notice**, that the **successor intends to continue the action of the predecessor.** (17a)

**SEC. 3.13. *Incompetency or incapacity of a party.*** — If a party becomes incompetent or incapacitated, the court, upon motion with notice, may allow the action to be continued by or against **the legal representative of the incompetent or incapacitated person.** (18 Rev.)

**SEC. 3.14. *Indigent party.*** — A party may, **pursuant to Republic Act 9406**, be authorized to litigate as an indigent and **be assisted by counsel in an action if the Executive Judge of the court**, upon an *ex parte* application and hearing, is satisfied that the party is one who has no money, property **or means of support sufficient and available for basic necessities.**

**The indigent shall not pay docket and other lawful fees, except mediation fees and deposit for the Sheriffs' Trust Fund. However, such docket and other lawful fees which the indigent was exempted from paying shall be a lien on any judgment rendered in the case favorable to the indigent, unless the court otherwise provides. Transcripts of stenographic notes shall be provided to the indigent free of charge.** (21a)

**SEC. 3.15. *State interest.*** — In any action involving the validity of any treaty, international or executive agreements, law, ordinance, executive order, presidential decree, rules or regulations, **in all special proceedings, and in land registration proceedings, the interest of the State shall be protected by its compulsory impleader. Notices for the State in all these actions shall be addressed to the Office of the Solicitor General.** (22a)

## Rule 4

### VENUE OF CIVIL ACTIONS (R4)

**SECTION 4.1. *Venue by agreement.*** — Once the parties agree in writing on a specific venue, such venue shall be exclusive. In the absence

of an agreement, the succeeding sections shall apply. (n)

**SEC. 4.2. *Venue of real actions.*** — **In the absence of an agreement on venue, real actions** shall be commenced and tried in the proper court which has jurisdiction over the place wherein the real property involved, or any portion thereof, is situated. (1a)

**SEC. 4.3. *Venue of personal actions.*** — **In the absence of an agreement on venue, personal actions** may be commenced and tried where the **plaintiff** or any of the principal **plaintiffs** resides, or where the **defendant** or any of the principal **defendants** resides, or where a non-resident **defendant** may be found, at the election of the **plaintiff**.

**Residence is the actual or habitual place of abode.** (2a)

**SEC. 4.4. *Venue of actions against non-residents.*** — If any of the defendants does not reside and is not found in the Philippines, and the action affects the personal status of the **plaintiff**, or any property of said **defendant** located in the Philippines, the action may be commenced and tried in the court of the place where the **plaintiff** resides, or where the property or any portion thereof is situated or found. (3a)

## Rule 5

### PLEADINGS (R7)

**SECTION 5.1. *Pleadings in general.*** — Pleadings are the written statements of the parties submitted to the court for **its consideration and action.**

**Pleadings include initiatory and responsive pleadings, motions, manifestations, comments, oppositions, replies, memoranda, and all other written submissions.** (n)

**SECTION 5.2. *Caption.*** — The caption sets forth the court, the nature of the action, and the docket number, which shall indicate the year of its filing.

The title of the action indicates the names of the parties. The parties shall all be named in the initiatory pleading; but in subsequent pleadings, it

shall be sufficient if the name of the first party on each side is stated with an appropriate indication when there are other parties.

Their respective participation in the case shall also be indicated. (1a)

**SEC. 5.3. *The body.*** — The body of the pleading sets forth its name, the allegations of the parties' claims or defenses, the relief prayed for, and the date of the pleading.

The allegations shall be divided into consecutively numbered paragraphs, and each shall state a single set of circumstances. A paragraph shall be referred to by its number in all succeeding pleadings.

Every pleading shall be dated and signed by counsel. (2a)

**SEC. 5.4. *Signature of counsel constitutes verification.*** — Any pleading signed by counsel duly authorized to practice law in the Philippines shall state the counsel's name and complete address, that shall not be a post office box address, including the respective E-mail or electronic Internet addresses and contact numbers, professional tax receipt number, Roll of Attorneys Number, MCLE Compliance details, IBP Official Receipt Number with date and place of issue, and any other compliance requirements.

The signature of counsel constitutes a verification by said counsel as an officer of the court that:

- (a) the counsel has read the pleading;
- (b) to the best of counsel's knowledge and based on documents in the possession of or reviewed by counsel, all allegations in the pleading are true and correct, and there is good ground to support them;
- (c) it is not being presented for any improper purpose such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and
- (d) the factual contentions have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for further investigation or discovery. (3a)

**SEC. 5.5. *Unsigned pleadings.*** — Any unsigned pleading produces no legal effect. However, the court may, in its discretion, allow such

deficiency to be remedied if it shall appear that the same was due to mere inadvertence and not intended for delay. (n)

**SEC. 5.6. *Verification by Party.*** — Any initiatory or responsive pleading shall be verified or accompanied by an affidavit executed by the parties or any one of them, or any person who is duly authorized by any of such party or parties.

A verification should be under oath stating that

- (a) the affiant has read the pleading;
- (b) to the best of affiant's personal knowledge or based on authentic document(s) in the possession of or reviewed by affiant, all allegations in the pleading are true and correct, and there is good ground to support them;
- (c) it is not being presented for any improper purpose such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and
- (d) the factual contentions have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for further investigation or discovery.

A pleading required to be verified which contains a verification based on "information and belief," or upon "knowledge, information, and belief," or lacks a proper verification, shall be treated as an unsigned pleading.

In cases where the affiant is outside the Philippines or in any manner unable to submit the verification required under this rule, the submission of a photocopy, facsimile, or an electronic copy of the verification in whatever form shall be allowed, provided that:

- (a) the verification is under oath before any officer duly authorized to administer oaths; and
- (b) The affiant subsequently executes the proper verification in compliance with this rule. (4)

**Rule 6****FORUM SHOPPING (N)**

**SECTION 6.1.** *Forum shopping.* — Forum shopping may refer either to the filing of:

- (a) Multiple actions before any court, tribunal, or agency where there is identity of causes of action and parties, or, at least, such parties representing the same interests in both actions; or
- (b) Two or more unfounded motions for inhibition of a judge that are not based on mandatory grounds for inhibition under the first paragraph of Section 1 of Rule 137 of the Rules of Court; provided that, in any case, each party shall only be allowed to file one motion for voluntary inhibition as defined under the second paragraph of Section 1 of Rule 137. (n)

**SEC. 6.2.** *Forum shopping, prohibited; sanctions.* — Forum shopping is strictly prohibited. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his or her counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. (6)

**SEC. 6.3. *Certification of non-forum shopping, when required.*** — All initiatory pleadings shall contain a certification of non-forum shopping signed by the plaintiff, or any of the plaintiffs, or counsel, as follows:

“The plaintiff (or the undersigned counsel) certifies under oath that the filing of this initiatory pleading does not amount to forum shopping.”

By so certifying, the plaintiff or counsel attests that:

- (a) No action or claim involving the same cause of action between the same parties or, at least, such parties representing the same interests in both actions, has been filed before any court, tribunal or quasi-judicial agency,

or if filed, that the same is no longer pending and has been dismissed without prejudice.

- (b) To the best of the plaintiff's knowledge, no such other action or claim is pending or was previously filed.
- (c) If the plaintiff or counsel should thereafter learn that a similar action has been filed or is pending, the plaintiff or counsel shall report such fact and the status of the action within five (5) days from knowledge. (n)

**SEC. 6.4. Non-Compliance.** — Failure to comply with this rule shall not be curable by amendment of the initiatory pleading. (n)

## Rule 7

### INITIATORY AND RESPONSIVE PLEADINGS (R6)

**SECTION 7.1. *Initiatory and responsive pleadings, defined.*** — Initiatory and Responsive pleadings are the initial written statements of the respective claims and defenses of the parties. (1a)

**SEC. 7.2. *Initiatory Pleadings.*** — Initiatory Pleadings include:

- (a) Complaints;
- (b) Complaints in Intervention;
- (c) Permissive Counterclaim;
- (d) Cross-claim; and
- (e) Third, (Fourth, etc.)-Party Complaints. (n)

**SEC. 7.3. *Responsive Pleadings.*** — Responsive Pleadings include:

- (a) Answers;
- (b) Answers to Permissive Counterclaim;
- (c) Answers to Cross-claims;
- (d) Answers to Complaint in Intervention; and
- (e) Third, (Fourth, etc.)-Party Answers. (n)

**SEC. 7.4. *Complaint.*** — The complaint is the pleading where a party

asserts a claim, which shall contain the following under appropriate headings:

- (a) Parties:
  - 1. The names and residences of the Plaintiff and defendant including their respective E-mail or electronic Internet addresses and contact numbers if known to the party.
  - 2. Averments regarding the party's capacity to sue or be sued, or the authority of the representative to sue or be sued in the name of the real party in interest, or the legal existence of an organized association of persons that is made a party. In case of juridical persons, proof of authority of its representative to file the action shall be attached to the complaint
- (b) Facts: The ultimate and evidentiary facts constituting the plaintiff's cause of action, duly supported by the documents and/or evidence on which the action is based. Clear and legible copies thereof should be attached either to the pleading or the judicial affidavits, consecutively marked. The markings shall be retained throughout the proceedings.
- (c) Issues: A preliminary statement of foreseeable issues;
- (d) Laws: Specific applicable laws, rules, or jurisprudence on which the action is based or that support the action;
- (e) Conditions Precedent: Efforts taken to settle the dispute out of court, which include:
  - 1. sending a demand letter; and
  - 2. utilizing any two available settlement-based modes of alternative dispute resolution as enumerated in Title IV, Rule 1, Section 1.
- (f) Admissions: Specific proposals for stipulations or admissions of facts and documents.
- (g) Proposed Settlement:

1. An enumeration of acceptable terms of settlement.
2. A statement of willingness to submit the dispute to an arbitrator.

(h) Referral: The need for reference of certain matters or issues to a commissioner or assessor.

(i) Prayer: The specific reliefs prayed for.

(j) Verification: Verification either by the party or by counsel.

(k) Certification of Non-Forum Shopping, if necessary.

(l) The names and complete addresses of the counsel, including their respective E-mail or electronic Internet addresses and contact numbers if known; provided that a post office box address shall be prohibited.

(m) Proof of payment of docket and other required fees.

(n) Table of Exhibits  
Only exhibits included in the Table shall be allowed during trial.

(o) Table of Witnesses  
Only witnesses included in the Table shall be allowed to testify during trial. (3a)

**SEC. 7.5. Answer.** — An Answer is a pleading in which a defendant sets forth the following under appropriate headings:

(a) Parties: The names and residences of the Plaintiff and defendant including their respective E-mail or electronic Internet addresses and contact numbers if known to the party.

(b) Facts: The ultimate and evidentiary facts constituting the defendant's defense, duly supported by the documents and/or evidence on which the action is based. Clear and legible copies thereof should be attached either to the pleading or the judicial affidavits, consecutively marked. The markings shall be retained throughout the proceedings.

- (c) Issues: A preliminary statement of foreseeable issues.
- (d) Laws: Specific applicable laws, rules, or jurisprudence that support the defense.
- (e) Counterclaims/Cross-claims: All compulsory counterclaims and cross-claims arising from the complaint, including third (fourth, etc.)-party complaints, otherwise they shall be barred.
- (f) Admissions: Specific proposals for stipulations or admissions of facts and documents.
- (g) Settlement:
  - 1. An enumeration of acceptable terms of settlement.
  - 2. A statement of willingness to submit the dispute to an arbitrator.
- (h) Referral: The need for reference of certain matters or issues to a commissioner or assessor.
- (i) Prayer: The specific reliefs prayed for.
- (j) Verification: Verification either by the party or by counsel.
- (k) Certification of Non-Forum Shopping, if necessary.
- (l) The names and complete addresses of the counsel, including their respective E-mail or electronic Internet addresses and contact numbers if known; provided that a post office box address shall be prohibited.
- (m) Table of Exhibits
 

Only exhibits included in the Table shall be allowed during trial.
- (n) Table of Witnesses
 

Only witnesses included in the Table shall be allowed to testify during trial.

A permissive counterclaim, cross-claim, or third (fourth, etc.)-party complaint, if included in the Answer or filed in the same case, shall follow the same requirements for a Complaint, except numbers (a), (b), and (g) of

Section 7.4 of this Rule.

An answer to a permissive counterclaim, cross-claim, and third (fourth, etc.)-party complaint shall likewise follow the requirements for an Answer. (4a)

**SEC. 7.6. *Waiver of defenses.* — Defenses not pleaded in the answer shall be deemed waived, except when the court has no jurisdiction over the subject matter, when there is another action pending between the same parties for the same cause, or when the action is barred by a prior judgment or by the statute of limitations. A motion to dismiss on any ground is prohibited.**

**SEC. 7.7. *Dismissal or Judgment on Court's Initiative.* —** If on the face of the complaint, it is apparent that the court does not have jurisdiction over the subject matter of the action, the action has prescribed, or there is a failure to comply with pre-filing requirements, the court shall, on its initiative, dismiss the case.

After the filing of the answer and before the preliminary conference, the court, with or without a summary hearing, may on its own initiative dismiss an action on any of the following grounds: lack of jurisdiction over the subject matter, res judicata, litis pendentia, prescription, improper venue, or failure to comply with any of the conditions for filing.

Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court, after the filing of the answer and before the preliminary conference, may direct judgment on such pleading. However, in actions for declaration of nullity or annulment of marriage or for legal separation, the material facts alleged in the complaint shall always be proved. (n)

**SEC. 7.8. *Counterclaim.* —** A counterclaim is any claim that a defending party may have against an opposing party. (6a)

**SEC. 7.9. *Compulsory counterclaim.* —** A compulsory counterclaim is one which, being cognizable by the court, arises out of or is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction.

In first level courts, the counterclaim must be within their jurisdiction

both as to its amount and nature. If the counterclaim is in excess of the jurisdictional amount, the excess shall be waived.

In an original action before the Regional Trial Courts, the compulsory counterclaim may be considered regardless of the amount. (7a)

**SEC. 7.10. *Permissive Counterclaim.*** — A permissive counterclaim does not arise out of or is not necessarily connected with the subject matter of the opposing party's claim. It is an existing independent claim that may be filed separately in another case.

A permissive counterclaim, if not included in the answer, may also be filed together with a motion for leave within an inextendible period of 15 days from filing of the movant's answer. (n)

**SEC. 7.11. *Cross-claim.*** — A cross-claim is any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant. (8a)

**SEC. 7.12. *Reply to an Answer.*** — A reply is a pleading that alleges facts in denial or avoidance of new matters alleged by way of defense in an answer **to a complaint, a crossclaim, or a permissive counterclaim** and thereby joins or makes issue as to such new matters. If a party does not file such reply, all new matters alleged in the answer and the compulsory counter-claim, if any, are deemed controverted. When the defense is based on a written instrument, a copy of which is attached to the answer, then Title IV, Rule 10, Section 7 applies.

If a reply is filed, the Plaintiff shall attach a judicial affidavit and documents, if necessary. (10a)

**SEC. 7.13. *Period for filing a reply.*** — A reply shall be filed within an inextendible period of 15 days from receipt of the Answer. (6a, R11)

**SEC. 7.14. *Third (fourth, etc.)-party complaint.*** — A third (fourth, etc.)-party complaint is a claim that a defendant may, with leave of court, file against a person not a party to the action, called the third (fourth, etc.)-party defendant, for contribution, indemnity, subrogation, or any other relief, in respect of the original plaintiff's claim.

The third (fourth, etc.)-party complaint shall conform to the requirements set forth in Section 3 of this Rule. (11a)

**SEC. 7.15. *Period for filing the third (fourth, etc.)-party complaint.***

— The third (fourth, etc.)-party complaint shall be filed together with a motion for leave within an inextendible period of 15 days from filing of the movant's answer. (n)

**SEC. 7.16. *Answer to permissive counterclaim, cross-claim and third (fourth, etc.)-party complaint.*** — A defendant to a permissive counterclaim, cross-claim or third (fourth, etc.)-party complaint may allege in the answer all defenses, counterclaims or cross-claims. (13a)

**SEC. 7.17. *No Rejoinder.*** — A rejoinder or its equivalent is prohibited. (n)

## Rule 8

### MANNER OF MAKING ALLEGATIONS IN PLEADINGS (R8)

**SECTION 8.1. *In general.*** — Every pleading shall contain in a methodical and logical form, a complete and concise narration of the material facts relied upon for a claim or a defense, as the case may be, duly supported by laws and evidence.

A party shall specify the pertinent provisions of law supporting the claim or defense. (1a)

**SEC. 8.2. *Alternative causes of action or defenses.*** — A party may set forth two or more statements of a claim or defense, alternatively or hypothetically, either in one cause of action or defense, or in separate causes of action or defenses. When two or more statements are made in the alternative and one of them, if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. (2a)

**SEC. 8.3. *Other Defenses.*** — A defendant may hypothetically admit the material allegation in the pleading of the claimant, which would nevertheless prevent or bar the defendant's recovery. The affirmative defenses include fraud, statute of limitations, release, payment, illegality,

statute of frauds, estoppel, former recovery, discharge in bankruptcy, and any other matter by way of confession and avoidance.

A negative defense is the specific denial of the material fact or facts alleged in the pleading of the claimant essential to his or her cause or causes of action. (n)

**SEC. 8.4. *Fraud, mistake, condition of the mind.*** — In all averments of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity. Malice, intent, knowledge or other condition of the mind of a person may be averred generally. (5a)

**SEC. 8.5. *Domestic or Foreign Judgment.*** — In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it. A certified or authenticated copy of the judgment should be attached to the pleading. If the judgment is in a foreign language other than English, an official English translation should also be attached. (6a)

**SEC. 8.6. *Action or defense based on written instrument.*** — Whenever an action or defense is based upon a written instrument, the substance of such instrument or document shall be set forth in the pleading, and the original or a certified true copy thereof shall be attached to the pleading as an exhibit, duly marked, which shall be deemed a part of the pleading. (7a)

**SEC. 8.7. *How to contest such document.*** — When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them and sets forth what he or she or she claims to be the facts; but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused. (8a)

**SEC. 8.8. *Official document or act.*** — In pleading an official document or official act, it is sufficient to aver that the document was issued or the act done in compliance with law. The original or a clear certified true

copy of the document shall be attached and duly marked. (9a)

**SEC. 8.9. *Specific denial.*** — A defendant must specify each material allegation of fact the truth of which he or she or she does not admit and, whenever practicable, shall set forth the substance of the matters upon which he or she or she relies to support his or her denial; otherwise, it is deemed a general denial. Where a defendant desires to deny only a part of an averment, he or she or she shall specify so much of it as is true and material and shall deny only the remainder. Where a defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint, he or she or she shall so state, and this shall have the effect of a denial. (10a)

**SEC. 8.10. *Allegations not specifically denied deemed admitted.*** — Material averments in any initiatory pleading, other than those as to the amount of unliquidated damages, shall be deemed admitted when not specifically denied. (11a)

**SEC. 8.11. *Striking out of pleading or matter contained therein.*** — Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these Rules, upon motion made by a party within fifteen (15) days after the service of the pleading upon him, or upon the court's own initiative at any time, the court may strike out a pleading, or any portion thereof, that is prohibited, sham, false, redundant, dilatory, immaterial, impertinent, or scandalous. (12a)

## Rule 9

### EFFECT OF FAILURE TO PLEAD (R9)

**SECTION 9.1. *Defenses and objections not pleaded.*** — Defenses and objections not pleaded **in the answer** are deemed waived, **except that** when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter **of the action**, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim. (1a)

**SEC. 9.2. *Unimpleaded claims in the answer barred.*** — A compulsory counterclaim, or a cross-claim, not pleaded in the answer shall

be barred. (2a)

**SEC. 9.3.** Default; declaration of. —

- (a) If the defending party fails to answer within the **reglementary period**, the court shall, upon motion of the claiming party with notice to the defending party and proof of such failure, declare the defending party in default.
- (b) **The claiming party shall submit judicial affidavit in support of his or her claims. The court shall then render judgment which shall neither exceed the amount or be different in kind from that prayed for and proved nor award unliquidated damages.**
- (c) *Effect of order of default.* — A party in default shall be entitled to notice of subsequent proceedings but **shall not be allowed as the party respondent** to take part in **subsequent proceedings**.
- (d) *Relief from order of default.* — A party declared in default may, at any time after notice thereof and before judgment, file a motion under oath to set aside the order of default, upon proper showing that his or her failure to answer was due to **extrinsic** fraud, accident, mistake or excusable negligence and that he or she or she has a meritorious defense. In such case, the order of default may be set aside on such terms and conditions as the **court** may impose in the interest of justice.
- (e) *Effect of partial default.* — When a pleading asserting a claim states a common cause of action against several defending parties, some of whom answer and the others fail to do so, the court shall try the case against all upon the answers thus filed and render judgment upon the evidence presented. (3a)

**Rule 10****AMENDED AND SUPPLEMENTAL PLEADINGS (R10)****SECTION 10.1** Amendments in general. —

- (a) ***How amendments to pleadings made.*** — Pleadings may be amended by adding or striking out an allegation or the name of any party, or by correcting a mistake in the name of a party or a mistaken or inadequate allegation or description in any other respect, so that the actual merits of the controversy may speedily be determined, without regard to technicalities, and in the most expeditious and inexpensive manner. (1a)
- (b) ***Amendments as a matter of right.*** — A party may amend his or her pleading once as a matter of right at any time before a responsive pleading is served or, in the case of a reply, at any time within **fifteen (15)** days after it is served. (2a)
- (c) ***Amendments by leave of court.*** — Substantial amendments may be made only upon leave of court **granted after the movant and the adverse party shall have been given the opportunity to be heard.** (3a)
- (d) ***New copies.*** — When any pleading is amended, a new copy of the entire pleading, incorporating the amendments, which shall be indicated by appropriate marks, shall be filed. (7a)

**SEC. 10.2.** *Formal amendments.* — Clerical or typographical errors may be summarily corrected by the court at any stage of the action, at its initiative or on motion, provided no prejudice is caused thereby to the adverse party. (4a)

**SEC. 10.3.** *Supplemental pleadings.* — Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him or her to serve a supplemental pleading setting forth transactions, occurrences or events which have happened since the date of the pleading sought to be supplemented. The adverse party may plead thereto within fifteen (15) days from the notice of the order admitting the supplemental pleading. (6a)

**SEC. 10.4. Effect of amended pleadings.** — An amended pleading supersedes the pleading that it amends. However, admissions in superseded pleadings may be **offered and admitted** in evidence against the pleader; and claims or defenses alleged therein not incorporated in the amended pleading shall be deemed waived. (8a)

## Rule 11

### WHEN TO FILE RESPONSIVE PLEADING (R11)

**SECTION 11.1. Answer to the complaint.** — The respondent shall file his or her answer to the complaint within **thirty (30) days** after service of summons. **The court may, for justifiable reasons, grant but one extension to file the answer.** (1a)

**SEC. 11.2. Answer to amended complaint.** — Where the **petitioner** files an amended complaint as a matter of right, the **respondent** shall answer the same within **thirty (30) days** after being served with a copy **of the amended complaint**.

Where its filing is not a matter of right, the **respondent** shall answer the amended complaint **thirty (30) days** from notice of the order admitting the **amended complaint**.

An answer earlier filed may serve as the answer to the amended complaint if no new answer is filed.

This Rule shall apply to the answer to an amended counterclaim, amended cross-claim, amended third (fourth, etc.) party complaint, and amended complaint-in-intervention. (3a)

**SEC. 11.3. Answer to counterclaim or cross-claim.** — A **compulsory** counterclaim or cross-claim **may** be answered within **fifteen (15) days** from service.

**A permissive counterclaim or cross-claim must be answered within thirty (30) days from service.** (4a)

**SEC. 11.4. Answer to third (fourth, etc.)- party complaint.** — The time to answer a third (fourth, etc.)- party complaint shall be governed by the same rule as the answer to the complaint. (5)

**SEC. 11.5. *Reply.*** — A reply may be filed within **fifteen (15)** days from service of the pleading responded to. (6a)

**SEC. 11.6. *Answer to supplemental complaint.*** — A supplemental complaint may be answered within **fifteen (15)** days from notice of the order admitting the **supplemental complaint**. The answer to the complaint shall serve as the answer to the supplemental complaint if no new or supplemental answer is filed. (7a)

**SEC. 11.7. *Counterclaim or cross-claim arising after answer.*** — A counterclaim or a cross-claim which either matured or was acquired by a party after serving his or her pleading may, with **leave of court**, be presented as a counterclaim or a cross-claim by supplemental pleading before judgment. (9a)

**SEC. 11.8. *Omitted counterclaim or cross-claim.*** — When a pleader fails to set up a counterclaim or a cross-claim through oversight, inadvertence, or excusable neglect, or when justice requires, he or she or she may, by leave of court, set up the counterclaim or cross-claim by amendment before judgment. (10)

## Rule 12

### FILING AND SERVICE OF PLEADINGS, JUDGMENTS, AND OTHER PAPERS (R12)

**SECTION 12.1. *Coverage.*** — This Rule shall govern the filing of all pleadings and other papers, as well as the service thereof, except those for which a different mode of service is prescribed. (1)

**SEC. 12.2. *Filing and service, defined.*** — Filing is the act of presenting the pleading or other paper to the clerk of court.

Service is the act of providing a party with a copy of the pleading or paper concerned. If any party has appeared by counsel, service upon him or her shall be made upon his or her counsel or one of them, unless service upon the party himself is ordered by the court. Where one counsel appears for several parties, he or she or she shall only be entitled to one copy of any paper served upon him or her by the opposite side. (2)

**SEC. 12.3. *Manner of filing.*** — The filing of pleadings, appearances, motions, notices, orders, judgments and all other papers shall be made by:

- (a) presenting the original copies thereof, plainly indicated as such, personally to the clerk of court; or
- (b) sending them by registered mail; or
- (c) **licensed courier;** or
- (d) **electronic service in places where the court is electronically equipped.**

In the first case, the clerk of court shall endorse on the pleading the date and hour of filing. In the second case, the date of the mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing, payment, or deposit in court. The envelope shall be attached to the record of the case. **In the third and fourth cases, the date of receipt by the court shall be considered as the date of filing.** (3a)

**SEC. 12.4. *Papers required to be filed and served.*** — Every judgment, resolution, order, pleading subsequent to the complaint, written motion, notice, appearance, demand, offer of judgment or similar papers shall be filed with the court, and served upon the parties affected. (4)

**SEC. 12.5. *Modes of service.*** — Service of pleadings, motions, notices, orders, judgments and other papers shall be made personally, by mail, **licensed courier, electronic service, or facsimile transmission.** (5a)

**SEC. 12.6. *Personal service.*** — Service of the papers may be made by delivering personally a copy to the party or his or her counsel, **or their authorized representative(s) named in the appropriate pleading or motion,** or by leaving it in his or her office with his or her clerk or with a person having charge thereof. If no person is found in his or her office, or his or her office is not known, or he or she or she has no office, then by leaving the copy, between the hours of eight in the morning and six in the evening, at the party's or counsel's residence, if known, with a person of sufficient age and discretion then residing therein. (6a)

**SEC. 12.7. *Service by mail.*** — Service by registered mail shall be made by depositing the copy in the post office, in a sealed envelope, plainly

addressed to the party or his or her counsel at his or her office, if known, otherwise at his or her residence, if known, with postage fully pre-paid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered. If no registry service is available in the locality of either the sender or the addressee, service may be done by ordinary mail. (7)

**SEC. 12.8. *Electronic Service and Service by Facsimile.*** — Subject to prior agreement between the parties made known to the court and placed on record, service by electronic means shall be made by sending an e-mail to the party's or counsel's e-mail address and service by facsimile shall be by sending a facsimile copy to the party's or counsel's number. The sender shall take steps to ensure receipt of the matter served by calling and verifying with the recipient. In any event, the sender assumes the technical risks attendant to non-receipt of the same by the adverse party. If there is a discrepancy between the electronic document and facsimile copy sent and the hardcopy filed in court, the former shall prevail. (n)

**SEC. 12.9. *Constructive service.*** — If service of pleadings, motions, notices, resolutions, orders and other papers cannot be made under the **four** preceding sections, the office and place of residence of the party or his or her counsel being unknown, service may be made by delivering the copy to the clerk of court, with proof of failure of **service under Section 12.5 above**. The service is complete at the time of such delivery. (8a)

**SEC. 12.10. *Service of judgments, final orders or resolutions.*** — Judgments, final orders or resolutions shall be served either personally or by registered mail. **Upon *ex parte* motion by any interested party in the case, however, judgment, final order or resolution may be delivered by licensed courier, at the expense of the movant.** When a party summoned by publication has failed to appear in the action, judgments, final orders or resolutions against him or her shall be served upon him or her also by publication at the expense of the prevailing party. (9a)

**SEC. 12.11. *Completeness of service.*** — Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of ten (10) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he or she or she received the first notice of the postmaster, whichever date is earlier. **Service by licensed courier is complete upon actual receipt by the addressee, or after at least two**

**attempts to deliver by the courier service or upon the expiration of ten (10) days after the first attempt to deliver, whichever date is earlier.** (10a)

**SEC. 12.12. Priorities in modes of service and filing.** — Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. Violation of this Rule may be a cause to consider the paper as not filed. (11)

**SEC. 12.13. Proof of filing.** — The filing of a pleading or paper shall be proved by its existence in the record of the case.

- (a) If it is not in the record, but is claimed to have been filed personally, the filing shall be proved by the written or stamped acknowledgment of its filing by the clerk of court on a copy of the same;
- (b) If filed by registered mail, by the registry receipt and by the affidavit of the person who did the mailing, containing a full statement of the date and place of depositing the mail in the post office in a sealed envelope addressed to the court, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if not delivered.
- (c) **If filing is made by licensed courier service, proof shall be made by an affidavit of service by the person who brought the pleading or paper to the courier service together with the courier official receipt and document tracking number.**
- (d) **If filing is by electronic mail, by an affidavit of the person sending together with the printout of the pleading as sent electronically and an original copy written or stamped acknowledgment of its filing by the clerk of court. If an original copy by electronic mail is filed by registered mail, sub-section (b) of this section applies.** (12a)

**SEC. 12.14. Proof of service.** — Proof of personal service shall

consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is made by:

- (a) *Mail* — Proof thereof shall consist of an affidavit of the person mailing **stating the** facts showing compliance with Section 7 of this Rule.
- (b) *Registered mail* — Proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender **or**, in lieu thereof, the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.
- (c) *Licensed and duly accredited courier service* — **Proof shall be made by an affidavit of service by the person who brought the pleading or paper to the courier service together with the courier official receipt.**
- (d) *Electronic mail or facsimile* — **Proof shall be made by an affidavit of service by the person who sent the email or facsimile together with a printed proof of receipt.** (13a)

## Rule 13

### SUMMONS (R14)

**SECTION 13.1. Clerk to issue summons.** — Unless the complaint is on its face dismissible, the court shall, within ten (10) days from receipt of the case and proof of payment of the requisite legal fees, direct the clerk of court to issue the corresponding summons to the respondent. (1a)

**SEC. 13.2. Contents.** — The summons shall be directed to the **respondent**, signed by the clerk of court under seal, and contain:

- (a) the name of the court and the names of the parties to the action;
- (b) a direction that the **respondent** answer within the time fixed by these Rules;

- (c) a notice that unless the **respondent** so answers, **petitioner** will take judgment by default and may be granted the relief applied for.

A copy of the complaint and order for appointment of guardian ad litem, if any, shall be attached to the original and each copy of the summons. (2a)

**SEC. 13.3. *By whom served.*** — The summons may be served by the sheriff, his or her deputy, or other proper court officer. For justifiable reasons, **the court may authorize the Chairperson or Kagawad of the Barangay where the respondent resides or any suitable person to serve the summons. Parties or their representatives to the case cannot be authorized to serve the summons.** (3a)

**SEC. 13.4. *Failure to serve.*** — If the summons cannot be served on any or all of the respondents, within five (5) days from the last attempt to serve, the server shall make a report to the clerk of court stating the reasons for the failure of service, and furnish a copy to petitioner's counsel personally, or by registered mail, or, at petitioner's expense, by licensed and accredited courier. (n)

**SEC. 13.5. *Validity of Summons and issuance of alias summons.*** — Summons shall remain valid until duly served, unless recalled by the court.

**If the summons has been lost or destroyed, the clerk of court, on motion of the petitioner, may issue an alias summons.** (n)

**SEC. 13.6. *Service in person on respondent.*** — Whenever practicable, the summons shall be served by handing a copy thereof to the **respondent** in person, or, if he or she or she refuses to receive and sign for it, by tendering it to him. (6a)

**SEC. 13.7. *Substituted service.*** — If, for justifiable causes, the **respondent** cannot be served within a reasonable time as provided in the preceding section, service may be effected:

- (a) **By leaving copies of the summons at the respondent's residence with some person at least eighteen (18) years of age and suitable discretion then residing therein. Except when the service is effected by the Chairman or Kagawad of the Barangay, the process**

**server or officer serving the summons shall be accompanied by a barangay official who shall attest or certify to the service of summons, which certification shall form part of the return of service.**

- (b) By leaving the copies at **respondent's** office or regular place of business with some competent person in charge thereof. **A competent person includes one who customarily receives correspondence for the respondent.** (7a)

**SEC. 13.8. Service upon counsel of record.** — Where the summons could not be served personally or by substituted service despite diligent efforts within a reasonable period of time, or the adverse party is a resident of the Philippines temporarily absent therefrom or is a non-resident thereof, service of summons may be made upon the counsel of record of the defendant regardless of any limitations in his or her appearance.

**SEC. 13.9. Service by publication.** — When service by publication is allowed under these Rules, the publication of the initiatory pleading without the annexes and exhibits attached to it once in a newspaper of general circulation in the country where the respondent may be found shall be sufficient. If an interested party desires a copy of an of these annexes or exhibits, they may request for a copy from the proper court. (n)

**SEC. 13.10. Service upon entity without juridical personality.** — When persons associated in an entity without juridical personality are sued under the name by which they are generally or commonly known, service may be effected upon all the **respondents** by serving upon any one of them, or upon the person in charge of the office or place of business maintained in such name. But such service shall not bind individually any person whose connection with the entity has, upon due notice, been severed before the action was brought. (8a)

**SEC. 13.11. Service upon prisoners.** — When the **respondent** is a prisoner confined in a jail or institution, service shall be effected upon him or her by the officer having the management of such jail or institution who is deemed deputized as a special sheriff for said purpose. **The jail warden shall report to the court the fact of actual delivery of summons to the respondent.** (9a)

**SEC. 13.12. Service upon minors and incompetents.** — When the **respondent** is a minor, insane or otherwise an incompetent, service shall be made upon him or her personally and on his or her legal guardian if he or she or she has one, or if none, upon his or her guardian ad litem whose appointment shall be applied for by the **petitioner**. In the case of a minor, service may also be made on his or her father or mother. (10a)

**SEC. 13.13. Service upon domestic private juridical entity.** — When the **respondent** is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, service may be made on the president, managing partner, general manager, corporate secretary, treasurer, in-house counsel, **directors, or trustees of the corporation wherever they may be found.**

**If service cannot be made upon any one of the foregoing, service shall be made upon a person who customarily receives correspondence for the respondent at its principal office.** (11a)

**SEC. 13.14. Service upon foreign private juridical entity.** — When the **respondent** is a foreign private juridical entity **doing business in the Philippines as defined by law**, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers, agents, **directors, or trustees** within the Philippines.

**If the foreign private juridical entity is not registered in the Philippines or has no resident agent but is doing business in it as defined by law, service may, with leave of court, be effected out of the Philippines through any of the following means:**

- (a) **By personal service coursed through the appropriate court in the foreign country with the assistance of the Department of Foreign Affairs;**
- (b) **By publication once in a newspaper of general circulation in the country where the respondent may be found and by serving a copy of the summons and the court order by registered mail at the last known address of the respondent;**
- (c) **By facsimile or any recognized electronic means that could generate proof of service; or**

(d) **By such other means as the court may in its discretion direct.** (12a)

**SEC. 13.15. Service upon public corporations.** — When the **respondent** is the Republic of the Philippines, service may be effected on the Solicitor General; in case of a province, city or municipality, or like public corporations, service may be effected on its executive head, or on such other officer or officers as the law or the court may direct. (13a)

**SEC. 13.16. Service upon respondent whose identity or whereabouts are unknown.** — In any action where the **respondent** is designated as an unknown owner, or the like, or whenever his or her whereabouts are unknown and cannot be ascertained by diligent inquiry, service may, by leave of court, be effected upon him or her by publication in a newspaper of general circulation **duly accredited by the court and chosen by the movant** in such places and for such time as the court may order. **In such a case, only the basic complaint or petition, without the annexes, need be published.** (14a)

**SEC. 13.17. Extraterritorial service.** — When the **respondent** does not reside and is not found in the Philippines, and the action affects the personal status of the **petitioner** or relates to, or the subject of which is, property within the Philippines, in which the **respondent** has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the **respondent** from any interest therein, or the property of the **respondent** has been attached within the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under Section 13.6; or by publication in a newspaper of general circulation in such places **in the Philippines** and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the **respondent**, or in any other manner the court may deem sufficient **such as those in Section 12 of this Rule**. Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) days **nor more than ninety (90) days** after notice, within which the **respondent** must answer. (15a)

**SEC. 13.18. Residents temporarily out of the Philippines.** — When any action is commenced against a **respondent** who ordinarily resides within the Philippines, but who is temporarily out of it, service may, by leave of court, be also effected out of the Philippines, as under the preceding section. (16a)

**SEC. 13.19. *Leave of Court.*** — Any application to the court under this Rule for leave to effect service in any manner for which leave of court is necessary shall be made by motion in writing, supported by affidavit of the **petitioner** or some person on his or her behalf, setting forth the grounds for the application. (17a)

**SEC. 13.20. *Proof of service.*** — The proof of service of a summons shall be made in writing by the server and shall set forth the manner, place, and date of service; shall specify any papers which have been served with the process and the name of the person who received the same; and shall be sworn to when made by a person other than a sheriff or his or her deputy. (18)

**SEC. 13.21. *Proof of service by publication.*** — If the service has been made by publication, service may be proved by the affidavit of the **publisher**, editor, business or advertising manager, to which affidavit a copy of the publication shall be attached, and by an affidavit showing the deposit of a copy of the summons and order for publication in the post office, postage prepaid, directed to the **respondent** by registered mail to his or her last known address. (19a)

**SEC. 13.20. *Voluntary appearance.*** — The **respondent's** voluntary appearance in the action shall be equivalent to service of summons. The inclusion in an answer of grounds such as lack of jurisdiction over the person of the **respondent** shall not be deemed a voluntary appearance. (20a)

## Rule 14

### PRELIMINARY CONFERENCE (N)

**SECTION 14.1. *Policy of this Rule.*** — It is the policy of this Rule, in relation to rule on Face-to-Face Trial, to:

- (a) Require the parties to make a full disclosure of the known facts of the case early in the proceedings and submit to the court the affidavits and documents that evidence their claims, with the end in view of enabling the court to accurately identify the issues between the parties and ease the process of settling their disputes amicably or, if this not be possible, to considerably

narrow down the scope of trial;

- (b) Treat litigations, no longer as a match in the resources and skills of one party in building up his or her case and attacking and tearing that of the other party apart, but as a collective effort to search for truth and to render justice to all;
- (c) Empower the judge to take a direct role in examining the witnesses during trial and elicit from them the answers he or she or she needs for rendering a just judgment;
- (d) Make maximum use of the court's time and shorten trial without sacrificing the quality of hearing and adjudication;
- (e) Assist the court with work that the parties and their counsel can properly perform and thus enable the judge to attend to other important matters; and
- (f) Raise the level of professionalism of the court and the counsel appearing before the court in terms of promptness in meeting deadlines and coming to court on time.

**Sec. 14.2. *Mandatory disclosure of evidence.*** —The parties shall submit to the court and disclose to each other early in the proceedings all the evidence in the case that are known and available to them.

- (a) For this purpose, the court shall, *motu proprio* or on motion after the issues have been joined by the filing of the last pleading in the case, give notice to the parties to simultaneously submit to the court within thirty days from notice and serve upon each other, the following:
  1. The judicial affidavits of their witnesses in support of their allegations, 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, identified and marked as Exhibits C, C-1, C-2, and so on in the case of the complainant, P, P-1, P-2, and so on in the case of the plaintiff or

petitioner, Exhibits R-1, R-2, R-3, and so on in the case of the respondent, or Exhibits D, D-1, D-2, and so on in the case of the defendant, and duly authenticated by the proper witness or witnesses.

- (b) A party may, if he or she or she so desires, submit reply judicial affidavits respecting matters not touched by his or her initial ones within fifteen days of his or her receipt of the adverse party's judicial affidavits. No further judicial affidavit may be submitted without prior leave of court which is to be granted only on justifiable grounds.
- (c) Should a party or a witness desire to keep the original document or object evidence in his or her possession, he or she or she may, after the same has been identified, marked as exhibit, and authenticated, warrant in his or her judicial affidavit that the copy or reproduction attached to such affidavit is a faithful copy or reproduction of the original. In addition, the party or witness shall bring to court the original document or object evidence for a sideline comparison by the adverse party with the attached copy, reproduction, or pictures shortly before the preliminary conference begins. Unless the comparison is done and the result manifested in open court or is deemed waived, such secondary evidence shall not be admitted. This is without prejudice to the introduction of secondary evidence in place of the original when allowed by existing rules.
- (d) 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 or her control available for copying, authentication, and eventual production in court, the requesting party may avail himself of the issuance of a subpoena *ad testificandum* or *duces tecum* under Rule 21 of the Rules of Court. The party requesting the issuance of a subpoena shall bear the cost of its personal service upon the witness, the responsibility for ensuring that such

service is made, and the witness' expense for appearing before the lawyer who will prepare his or her judicial affidavit or supervise its preparation.

- (e) A party who fails to submit the required judicial affidavits and exhibits when due shall be deemed to have waived their submission. Still, the court may, for good cause shown and not later than fifteen days from receipt of the adverse party's judicial affidavits and exhibits, allow but once the late submission of the requirements. It may also, if no good cause is shown, still allow such late submission provided the defaulting party or his or her counsel, whoever may appear at fault, pays a fine of not less than ₦ 1,000.00 nor more than ₦ 5,000.00, at the discretion of the court.
- (f) In case a party submits judicial affidavits that do not conform to the content requirements of paragraph (a) and the attestation requirement of paragraph (b) of this section, the court shall issue an order excluding the same from the record. It may, however, allow but once and for good cause shown the subsequent submission of the compliant replacement affidavits within ten days of receipt of the exclusion order. The court may, if no good cause is shown, still allow such subsequent submission provided the erring party or his or her counsel, whoever may appear 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.
- (g) The direct testimony of a witness shall be deemed offered and admitted upon submission in court of his or her judicial affidavit, subject to motions for exclusion of inadmissible testimonies at the appropriate time and to the examination of such witness. The documents and object evidence that the parties previously marked as their exhibits shall also be deemed offered and admitted upon their submission in court as part of the testimony of the witness who testifies on their existence, execution, functions, or effects for the purposes that such testimony indicate, whether expressly or impliedly, subject to

motions for exclusion at the appropriate time and to the examination of the witness.

**SEC. 14.3. *Use of certain discovery procedures.*** — A party who desires to avail himself or herself of interrogatories to parties, requests for admissions, or depositions shall inform the court of his or her intention within fifteen (15) days from the notice mentioned in Sec.2 (a) of this Rule, otherwise it shall be deemed to have waived his or her right to avail himself of these modes of discovery. Such party shall take steps to complete the process and submit the material portions of the record of the proceedings, previously undisclosed documents or facts, and the necessary judicial affidavits pertaining to the fruits of the discovery, whether favorable to him or her or not, also within sixty (60) days of receipt of such notice or within such extension of time as the court may grant.

**SEC. 14.4. *Preparation of the Terms of Reference.*** — The Court shall, with the assistance of the counsels involved, prepare the Terms of Reference of the case that will control the scope of trial.

- (a) After the parties shall have submitted their respective judicial affidavits, documentary and object exhibits, and the results of the discovery procedures they have undertaken, the court shall issue an order requiring the petitioner's counsel, as officer of the court, to submit to it and serve on the respondent's counsel within fifteen (15) days from notice a brief, concise, and fair draft of the Terms of Reference of the case, containing:
  - 1. A summary of the admitted facts;
  - 2. A statement that the documents attached to judicial affidavits or object evidence referred to are found to be faithful reproduction or representation of the original;
  - 3. A summary of the totality of the facts that the petitioner's evidence appears to have established;
  - 4. A summary of the totality of the facts that the respondent's evidence appears to have established;
  - 5. Based on the above two summaries, a statement of the factual issue or issues that the conflicting

evidence of the parties present;

6. A list of the witnesses from either sides who, based on their judicial affidavits and exhibits, are competent to testify on each of the factual issue or related factual issues in the case; and
7. A statement of the actual or potential legal issues that the case presents once the factual issues have been resolved one way or the other.

(b) An issue is factual when the contending parties cannot agree that a thing exists or has actually happened. An issue is legal when the contending parties assume a thing exists or has actually happened but disagree on its legal significance or effect on their rights or obligations.

(c) Only relevant and significant issues need be tried. An issue is relevant and significant when its resolution will help decide the case on its merits. Otherwise, it is irrelevant and need not be tried.

(d) Every factual issue should be adequately stated. The statement of an issue is adequate when it contains words describing the ultimate facts that the party bearing the burden of proving the affirmative of such issue must establish by his or her evidence. “Whether or not the respondent is liable to the petitioner” is a poor statement of the issue. It should rather read, “whether or not the respondent negligently bumped petitioner’s car with his or her jeep.”

(e) All facts alleged by the parties in their complaint, answer, and judicial affidavits, when not put in issue in the Terms of Reference shall be deemed admitted or otherwise regarded as irrelevant to the resolution of the dispute.

(f) The respondent’s counsel shall, as officer of the court, file within fifteen (15) days of his or her receipt of his or her copy of the petitioner’s draft Terms of Reference, his or her comment on the same, suggesting corrections that need to be made on the draft. If the respondent’s counsel fails to submit his or her comment on the copy of the draft he or she or she received, he or she or she shall be

deemed to have waived such comment.

- (g) Within fifteen (15) days of its receipt of the comment, or after the lapse of the fifteen (15) day period for the respondent's counsel to file the comment, the court shall prepare a final version of the Terms of Reference, using the draft that petitioner's counsel prepared and taking into account the comment of respondent's counsel.
- (h) If the petitioner's counsel fails to submit the required draft of the Terms of Reference, the court may instead direct the respondent's counsel to do the omitted work, which when submitted shall be the court's basis for preparing the final version of such Terms of Reference.

**SEC. 14.5. *Referral to the Pairing Branch for Judicial Dispute Resolution.*** — The Branch Clerk of Court shall, upon receipt of the final version of the Terms of Reference prepared by the court and with prior coordination with the court's pairing branch, give notice to both parties and counsel to appear before such pairing branch on a date and time previously agreed on by phone calls or electronic message services for a judicial dispute resolution conference, wherein each judge, acting as a mediator, shall exert every suitable effort to amicably settle the case, using his or her knowledge of the parties' relative positions based on the Terms of Reference attached to the record forwarded to it. The pairing branch's success in this regard shall be made part of his or her record of accomplishment for the particular year.

(n)

**SEC. 14.6. *Notice of Preliminary Conference.*** — The branch clerk of court shall, upon failure of the judicial dispute resolution to settle the case and the eventual return of the record from the pairing branch, serve copies of the same on the parties through their counsel, requiring both parties and counsel to appear before the court for a preliminary conference on a date and time they shall have previously agreed on by phone calls or electronic message services. It shall be the duty of counsel to promptly inform their respective clients regarding the setting and the need for them to be present as well.

**SEC. 14.7. *Appearance of parties.*** — It shall be the duty of the parties and their counsel to appear at the preliminary conference. A party's non-appearance may be excused only for valid cause shown or if he or she or she is represented by another who is fully authorized to act on his behalf

respecting all the matters subject of the conference.

**SEC. 14.8. *Decision by default against absentee.*** — In the event a party or his counsel fails to appear at the preliminary conference, the court shall, within fifteen (15) days from the date of the scheduled preliminary conference, render a decision, adjudicating the other party's claims based solely on the evidence the latter shall have already submitted.

**SEC. 14.9. *Decision by default, when set aside.*** — The court may, however, set aside a judgment rendered under Section above if, within fifteen (15) days from notice of the decision, the party concerned files a motion with the court with prior notice to the adverse party that his failure to comply with what was required of him or her has been due to extrinsic fraud or unavoidable accident. Only when the ground is clearly meritorious will the court grant the motion. It may at its discretion, however, where the ground is not clearly meritorious, still grant the motion but upon payment by the defaulting party or his counsel, whoever may appear at fault, of a fine of not less than ₦ 1,000.00 nor more than ₦ 5,000.00.

**SEC. 14.10. *Matters to be taken up at the preliminary conference.*** — The court shall take the following actions during the preliminary conference in the order listed below:

- (a) **The court shall determine, in consultation with the parties and their counsel, if there is a need to make changes in the contents or wordings of the Terms of Reference that it earlier prepared. In the affirmative, the court shall enter those changes on the face of that document.**
- (b) If a party insists that the court try an excluded issue, the court shall have the same included for trial provided such party makes a deposit for court costs amounting to not less than ₦ 10,000.00 nor more than ₦ 50,000.00 at the discretion of the court. Should the trial court or, on appeal, a higher court find the additional issue a sham issue, it shall order the deposit forfeited to the court, otherwise it shall have the same refunded to the party concerned.
- (c) Taking into account the issues in the case, the court shall

make a final attempt to persuade the parties to settle their disputes amicably. It might ask the parties hypothetically to consider what the possible effects on them would be if the court were to decide the issues one way or the other, now that trial is about to begin. The court may adjourn the preliminary conference but once if there is a chance of settlement and the parties need time to consider the matter; otherwise, the court shall proceed with the conference.

- (d) The court shall, in consultation with the parties, (1) fix the order in which the issues are to be tried, (2) identify the witnesses who need to be present and testify on each of such issues, (3) set the specific dates for reception of evidence on each issue or related issues, (4) determine whether the circumstances warrant a regular trial or a summary trial as provided in the rule on Face-to-Face Trial below, (5) determine who among the witnesses are exempt from face-to-face examination as provided in these rules determine the need to refer certain issues to trial by commissioners under these rules. The court shall summarize these arrangements towards the end of the preliminary conference and issue an Order of Trial, copy furnished the parties, embodying such arrangements.
- (e) The court may, as a result of the preliminary conference or in the course of it when the circumstances warrant, render judgment or cause the dismissal of the action should a valid ground for the same exists. If evidence is required for adjudicating a ground for dismissal, the court shall set the case for reception of such evidence and dismiss the action if warranted.

## Rule 15

### SUBPOENA (R21)

**SECTION 15.1.** *Subpoena and subpoena duces tecum.* — Subpoena is a process directed to a person requiring him or her to attend and to testify at the hearing or the trial of an action, or at any investigation conducted by

competent authority, or for the taking of his deposition. It may also require him or her to bring with him or her any books, documents, or other things under his control, in which case it is called a subpoena *duces tecum*. (1)

**SEC. 15.2.** *By whom issued.* — The subpoena may be issued by:

- (a) The court before whom the witness is required to attend;
- (b) **The court where the action is pending, in cases of deposition;**
- (c) The officer or body authorized by law to do so in connection with investigations conducted by said officer or body; or
- (d) Any Justice of the Supreme Court or of the Court of Appeals in any case or investigation pending within the Philippines.

When application for a subpoena to a prisoner is made, **the court** or officer shall examine and study carefully such application to determine whether the same is made for a valid purpose.

No prisoner sentenced to death, *reclusion perpetua* or life imprisonment and who is confined in any penal institution shall be brought outside the penal institution for appearance or attendance in any court unless authorized by the Supreme Court. (2a)

**SEC. 15.3.** *Form and contents.* — A subpoena shall state the name of the court and the title of the action or investigation, shall be directed to the person whose attendance is required, and in the case of a subpoena *duces tecum*, it shall also contain a reasonable description of the books, documents or things demanded which must appear to the court *prima facie* relevant. (3)

**SEC. 15.4.** *Quashing a subpoena.* — The court **where the case is pending** may quash a subpoena *duces tecum* upon motion promptly made and, in any event, at or before the time specified therein if it is unreasonable and oppressive, or the relevancy of the books, documents or things does not appear, or if the person in whose behalf the subpoena is issued fails to advance the reasonable cost of the production thereof.

The court may quash a subpoena *ad testificandum* on the ground that the witness is not bound thereby. In either case, the subpoena may be

quashed on the ground that the witness fees and kilometrage allowed by these Rules were not tendered when the subpoena was served. (4a)

**SEC. 15.5. Subpoena for depositions.** — Proof of service of a notice to take a deposition, as provided in Sections 15 and 25 of Rule 23, shall constitute sufficient authorization for the issuance of subpoenas for the persons named in said notice by **the court where the case is pending**. The clerk shall not, however, issue a subpoena duces tecum to any such person without an order of the court. (5a)

**SEC. 15.6. Service.** — Service of a subpoena shall be made in the same manner as personal or substituted service of summons, **by registered mail, or by licensed and accredited courier service**. The original shall be exhibited and a copy thereof delivered to the person on whom it is served, tendering to him or her the fees for one day's attendance and the kilometrage allowed by these Rules, except that, when a subpoena is issued by or on behalf of the Republic of the Philippines or an officer or agency thereof, the tender need not be made. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. If the subpoena is duces tecum, the reasonable cost of producing the books, documents or things demanded shall also be tendered. (6a)

**SEC. 15.7. Personal appearance in court.** — The court may at its discretion call a person who happens to be present at the trial, although he or she or she is not in the list of witnesses scheduled to give testimony, if it appears that his testimony is relevant to the issue at hand. Under the circumstance, it is as if he or she or she had been subpoenaed by the court. (7a)

**SEC. 15.8. Compelling attendance.** — In case of failure of a witness to attend, the court or judge issuing the subpoena, upon proof of the service thereof and of the failure of the witness, may issue a warrant to the sheriff of the province, or his deputy, to arrest the witness and bring him or her before the court or officer where his attendance is required, and the cost of such warrant and seizure of such witness shall be paid by the witness if the court issuing it shall determine that his failure to answer the subpoena was wilful and without just excuse. (8)

**SEC. 15.9. Contempt.** — Failure by any person without adequate cause to obey a subpoena served upon him or her shall be deemed a

contempt of the court from which the subpoena is issued. If the subpoena was not issued by a court, the disobedience thereto shall be punished in accordance with the applicable law or Rule. (9)

SEC. 15.10. *Exceptions.* — The provisions of Sections 8 and 9 of this Rule shall not apply to a witness who for some justifiable and compelling reason cannot come to court. Under such circumstance, the party seeking the appearance of such witness can with leave of court and at his expense, resort to a video conference system or software which ensures a contemporaneous video transmission of the testimony of the witness who is in a different location as if the witness has personally appeared and testified in court. The testimony of said witness shall be subject to the same rules of evidence under Rule 132 of the Rules of Court. (10a)

## Rule 16

### FACE-TO-FACE TRIAL (N)

**SECTION 16.1. Face-to-face trial, what it requires. — In a face-to-face trial:**

- (a) The court shall examine and determine the truthfulness of the judicial affidavits that constitute direct testimonies of the witnesses in the case;
- (b) The witnesses from all contending sides shall appear together before the court and simultaneously swear to the truth of their respective testimonies;
- (c) The witnesses shall sit face-to-face around the table in a non-adversarial environment and answer questions from the court and the parties' counsel respecting the factual issue under consideration;
- (d) The court shall initiate the inquiry into each factual issue strictly in the sequence provided in the Order of Trial although such inquiry may cover two or more closely related issues;
- (e) A witness or witnesses may testify on one or more issues in accordance with the Order of Trial;
- (f) Only one person at a time shall speak during the trial

and always with prior permission from the court which shall take steps to ensure that the person who speaks is identified for the record;

- (g) The witnesses shall address their answers to the examining judge or counsel;
- (h) The witnesses shall not pose questions to the other witnesses relating to their testimonies but shall be given equal opportunity to respond to the same; and
- (i) The parties shall have their turns to cross examine, redirect, and re-cross the witnesses.

**SEC. 16.2. When face-to-face examination of witnesses shall not apply.** — The face-to-face examination of witnesses shall not apply when one of the witnesses to the factual issue under consideration is either (a) a child covered by the Rule on Examination of a Child Witness or (b) a person who is mentally, psychologically, or physically challenged, or has a similar condition that puts him or her at a disadvantage in a face-to-face confrontation. In such a case, the witnesses on that issue shall be examined separately. The face-to-face examination shall, however, proceed with respect to the other issues that do not involve the child or disadvantaged witness.

**In special civil actions and other proceedings requiring the examination of the witnesses by the court and the counsel for the parties, the face-to-face hearing of witnesses shall not be required.**

**SEC. 16.3. Language used during trial.** — The court shall require the witnesses in the face-to-face trial to testify either in English or Filipino, whichever of these is the language that would enable such witnesses, the court, and the counsel to have fair exchanges. If any of the witnesses cannot take part in such exchanges because of language difficulty, the examination of this witness shall be conducted in the language or dialect known to him. In this case, the judge or the examining counsel shall avail himself of an interpreter of his choice who shall assist him or her in asking his questions and appreciating the answers of the witness. In any event, it is the recording of the actual answers given by the witness, not the English or Filipino translation, which will constitute the official and binding testimony of the witness. When quoting in his pleading, motion, memorandum, petition, or other paper, the text of questions and answers of a witness given in a local

dialect, counsel shall supply the translation into English or Filipino in appropriate parenthesis.

**Sec. 16.4. *Exclusion of inadmissible testimonies and exhibits from the judicial affidavits.*** — A party may move on proper ground to disqualify a witness before he or she or she is examined and strike out his judicial affidavit or exclude any of the answers found in it on ground of inadmissibility. The court shall promptly rule on the motion and if granted cause the marking of any excluded answer by placing it in brackets under the initials of an authorized court personnel. Such party may also move to exclude any of the exhibits attached to such affidavit on ground of inadmissibility and the court shall promptly rule on the same. Should the exhibits be voluminous, the objecting party shall make his motion in writing before the trial to facilitate a ruling. The rulings of the court respecting the exclusion of testimonies and exhibits shall be without prejudice to a tender of excluded evidence under the appropriate rule.

**SEC. 16.5. *Two-phase examination of witnesses.*** — The examination of the witnesses from the contending sides in the face-to-face trial shall consist of two phases: the first phase shall be by the court and the second by the parties' respective counsel.

**SEC. 16.6. *Examination by the court.*** — The following shall govern the court's examination of the witnesses from the contending sides:

- (a) The court shall examine the witnesses regarding the issue or related issues at hand in no particular sequence and may also direct its question to one or more of the witnesses from the contending sides.
- (b) When the question from the court is directed to a specific witness, the other witnesses from the same side may seek permission to supplement, clarify, or qualify the answer that the first witness has given.
- (c) In turn, the court shall give the witnesses from the other side equal time and opportunity to reply.
- (d) The court may allow the witnesses from the contending sides to continue their divergent exchanges provided new facts or new arguments are introduced and the testimonies have not become

repetitive.

- (e) The court may also stop the exchanges if the answers from the contending sides have sufficiently clarified for it their respective positions and the points of their disagreement.
- (f) The court may, before moving the examination of the witnesses from first phase to second phase, summarize its own understanding of the respective positions of the parties and the testimonies of their witnesses on the issue or related issues at hand.

**SEC. 16.7. *Exceptions to the court's examination of the witnesses.***

— The counsel for any party may, in the course of the court's examination of the witnesses, take exceptions to objectionable questions that it poses to one or some of them. The exceptions shall simply state the legal grounds for objection with no further explanation. The court shall act on the exceptions as follows:

- (a) In case of exceptions as to form, such as when the questions from the court are perceived to be argumentative, leading, multiple, repetitive, vague, improper characterization, confusing, or unfair, the court may either simply note the exception or rephrase its question;
- (b) In case of exceptions as to substance, such as when the questions from the court are perceived to elicit answers that are inadmissible on public policy grounds such as those relating to the rights against self-incrimination, privileged communication, disqualification, and to the Statute of Frauds, rape shield law, bank secrecy laws, AMLA non-disclosure rule, and other laws or rules, the court shall promptly rule on such exceptions;
- (c) In case of exceptions as to admissibility under the rules governing best evidence, parol evidence, conclusion or opinion evidence, hearsay evidence, irrelevant evidence, or character evidence, the court may simply take note of the exceptions and consider the same when deciding the case.

SEC. 16.8. *Examinations by counsel.* — The following shall govern the examination of the witnesses by counsel:

- (a) After the first phase of examination, the court shall allow counsel from the contending sides to examine the witnesses on the same issue or related issues covered by the first phase. This second phase examination shall be without prejudice to the court's further examination of the witnesses whom counsel examines.
- (b) Unless the court for good reason sets a different order of examination, the counsel's examination of the witnesses shall be in the following order:
  1. Examination shall begin with the petitioner's witness or witnesses. (i) respondent's counsel shall cross-examine them based on their judicial affidavits, the attached exhibits, and the answers they gave during the court's first-phase examination. If there be other parties who have joined cause with the respondent, their counsel shall also be given the opportunity to cross-examine these witnesses. (ii) Petitioner's counsel may then conduct a re-direct examination of his witness or witnesses on matters that the court and adverse counsel' covered. (iii) respondent's counsel and the other counsel who have joined cause with him or her may conduct a re-cross examination of the petitioner's witness or witnesses.
  2. The next to be examined shall be the respondent's witness or witnesses. Petitioner's counsel and, after him, the counsel of other parties who may have joined cause with the petitioner shall in turn cross-examine respondent's witness or witnesses. This shall be followed by redirect examination and re-cross examination by the appropriate counsel in the same order and manner provided above.

3. Witness or witnesses for parties other than the petitioner or respondent shall be cross examined by counsel of the parties who have an interest in their testimonies, followed by a redirect and re-cross consistent with the order and manner provided above.
4. Counsel for a party (other than the party presenting the witness) who has an interest in the testimony of a particular witness shall have the opportunity to examine him or her in the course of the conduct of the examinations in (1), (2), and (3) above.
5. After counsels have concluded their examinations of the witnesses, the court shall terminate the second phase respecting the particular issue or related issues and move to the examination of the witnesses respecting the next issue or related issues, if such further examination is likewise in the agenda of the court for that day's setting. The reception of evidence for the next issue or related issues may be scheduled on another setting in accordance with the Order of Trial.

(c) *Objections to the questions of counsel* — During cross examination by adverse counsel, counsel who presented the witness or witnesses may object to questions asked of the latter or move to strike out the answers given based on the grounds stated in Section 7 above. The court shall act on the objections or motions or simply note them as provided under the same Section 7.

**SEC. 16.9. Examination of Expert Witnesses.** — The examination of expert witnesses shall follow the same procedure provided in Sections 6, 7, and 8 above. With leave of court, however, an expert witness may ask questions directed to the other party's expert witness on any matter covered by the testimony of the latter on the issue or related issues at hand.

**SEC. 16.10. Face-to-face settings shall be intransferrable.** —

- (a) Because of the numerous persons involved in and the complex preparations required for the conduct of a face-to-face trial, the dates set for the same shall be untransferable except on ground of fortuitous event or serious illness of counsel or his witness. The party seeking postponement or resetting of the hearing has the burden of proving his ground with satisfactory evidence, otherwise such party shall be deemed to have waived the appearance of counsel and witnesses at the scheduled face-to-face trial.
- (b) No motion for postponement or resetting shall be granted on ground of serious illness of counsel or his witness, unless the party concerned presents a medical certificate issued by a physician stating that the illness is of such gravity as to prevent counsel or his witness from attending the scheduled hearing. The judge may require such physician to appear before him or her or order another physician either government-employed or retained by the adverse party, to verify the truth of the certification. If such certification turns out to be false, the certifying physician shall be held in contempt of court and punished accordingly.
- (c) If the ground for postponement or resetting turns out to be false, the party or counsel who sought it shall be subject to contempt of court to the extent that he or she or she is responsible for it.

**SEC. 16.11. *Consequences of failure to appear at the trial.* —**

- (a) The failure of counsel to appear at the pre-agreed face-to-face trial without obtaining a prior postponement shall be deemed a waiver of his appearance and trial shall proceed without him. His witnesses, if present, shall be regarded as witnesses procured by the court in its pursuit of the truth concerning the case and shall be examined in the usual course.
- (b) In the event of the failure of a witness to appear, the court shall order his judicial affidavit expunged as direct

testimony in support of the party presenting the witness.

**SEC. 16.12. *Newly discovered evidence; new issues evolving during trial.*** — A party may, in the course of trial, file a motion to admit newly discovered evidence subject to the rule governing its admission. A party may also file a motion to amend the Order of Trial to include a new issue or issues that may have since evolved without further need of amending the pleadings.

**SEC. 16.13. *Regular or summary trial schedules.*** — The schedules for holding face-to-face trial shall either be regular or summary based on the circumstances of each case. Where the issues are complex or numerous and the evidence from both sides consist of the testimonies of several witnesses or involve numerous pieces of evidence, the court shall hold a regular face-to-face trial, with the hearings spread over a period of time. Where the issues are simple and few, the court shall hold a simple one-time face-to-face trial, with an oral judgment rendered at the end of such trial. But, if in the course of summary trial, the court discovers that the issues are after all complex or numerous, it shall convert the same to a regular trial and defer further proceedings in the case to other dates.

**SEC. 16.14. *Memorandum, oral argument, and judgment.*** — The court shall hear the parties argue their respective positions before rendering judgment in the case, as follows:

(a) In the regular trial:

1. The court shall, after all the issues in the case have been heard, direct the parties to simultaneously submit their respective memoranda within fifteen (15) days from the date the face-to-face trial ended, accompanied by a softcopy of the same in a format acceptable to the court.
2. Further, the court shall, within ten (10) days of receipt of such memoranda, set the case for oral argument on such date and time as the court and the parties may agree on.
3. The court shall render a written decision within ninety (90) days after hearing the parties on their oral argument. It may wholly or partially adopt or

use the memorandum of the winning party for its decision or prepare its own.

(b) In the summary trial:

1. The court shall, immediately after all the witnesses have been examined, hear the parties briefly on oral argument.
2. It shall at the close of such argument, orally state its rulings on the issue or issues involved and announce the dispositive portion of its judgment.
3. The oral judgment shall be recorded in the minutes of the proceedings which, together with the resolution of each issue, and shall be signed by the parties or their counsel as evidence that they had taken note of the same. If a party or his counsel refuses to sign, such refusal shall be reflected in the same minutes.
4. The court may direct the winning party to submit within fifteen (15) days from the oral judgment a draft of the decision based on the oral judgment then rendered, accompanied by a softcopy of the same in a format acceptable to the court.
5. In any event, whether the court adopts the winning party's draft or not, it shall promulgate its written decision in the case within thirty (30) days from the date of the oral judgment.
6. The period to appeal the judgment of the court in a summary hearing with judgment shall be reckoned from the date of receipt of written decision by the appealing party.

## Rule 17

### TRIAL BY COMMISSIONERS (N)

**SECTION 17.1.** *When to make reference.* — Reference to trial by commissioner/s by consent or, as ordered by the court on motion, should be

availed of by the parties no later than preliminary conference and the disputed issues to be settled through trial by commissioner/s should be specified in the Pre-trial Order.

Trial by commissioner/s should be held simultaneously or soon after the scheduled adjudication hearing.

**SEC. 17.2. *Reference by Consent.*** — Where parties have agreed in writing anytime before preliminary conference, the court may order the disputed issues in a case to be referred to a commissioner or a panel of commissioners to be agreed upon by the parties or to be appointed by the court.

**SEC. 17.3. *Reference Ordered on Motion.*** — When the parties do not consent, the court may upon motion, direct that trial be held by commissioner/s in cases that are complex, industry specific, requires the examination of a long account on either side, requires the analysis or opinion of an expert, or when taking of an account is necessary for the information of the court.

**SEC. 17.4. *Number of Commissioners.*** — The parties may agree to the appointment of a sole commissioner or a panel of three (3) commissioners within fifteen (15) days after the reference to trial by commissioner/s has been made. Where the parties have not agreed upon the number of commissioners, the court shall appoint a sole commissioner, save where it appears to the court that the dispute is such as to warrant the appointment of three (3) commissioners.

#### **SEC. 17.5. Appointment of Commissioners. —**

- (a) If a sole commissioner is to be appointed, either party may propose to the other the names of one or more persons, one of whom, upon agreement of the parties, shall serve as the sole commissioner.
- (b) If within fifteen (15) days after receipt by a party of a proposal made in accordance with the preceding paragraph, the parties have not reached agreement on the choice of a sole commissioner, or within such additional time as may be allowed by the court but at no instance to exceed thirty (30) days, the sole commissioner shall be

appointed by the court. The court shall make the appointment within fifteen (15) days after the expiration of the period granted to the parties to come into an agreement.

(c) If three (3) commissioners are to be appointed, each party shall appoint one commissioner within (15) days from reference to trial by commissioner/s by consent or ordered on motion. If a party fails to appoint a commissioner, the appointment shall be made by the court. The two commissioners appointed shall choose the third commissioner, who will act as the Chairman of the panel of commissioners. If the two commissioners fail to choose the third commissioner within fifteen (15) days from both their appointments or within the time limit fixed by the court, the third commissioner shall be appointed by the court within fifteen (15) days after the expiration of the period granted to the two commissioners to appoint a third commissioner.

A decision by a panel of commissioners is given by a majority decision. If there be no majority, the decision may be made by the Chairman alone.

#### **SEC. 17.6. *Qualifications.* —**

(a) Every commissioner, even if appointed by the parties, must be and remain independent of and impartial to the parties involved in the proceedings.

(b) A prospective commissioner shall sign a statement of independence and disclose in writing to the court any facts and circumstances which might be of such a nature as to call into question the commissioner's independence in the eyes of the parties. The court shall provide such information to the parties in writing and fix a time limit for any comments to be received.

(c) A commissioner shall immediately disclose in writing to the court and to the parties any facts or circumstances which may affect his independence and impartiality, or anything of a similar nature, which may arise during the

course of the trial.

- (d) It is the duty of the commissioner/s to proceed with all reasonable diligence. Either party, on notice to the parties and commissioner, may apply to the court for an order requiring the commissioner to expedite the proceedings and to make his report.

#### **SEC. 17.7. Challenge of Commissioners. —**

- (a) Any commissioner may be challenged if circumstances exist that give rise to justifiable doubts as to the commissioner's impartiality and independence.
- (b) A challenge of a commissioner shall be made by submission to the court a sworn written statement specifying the facts and circumstances on which the challenge is based. The challenge shall be notified to the other party, the commissioner who is challenged and to the other commissioners, if any.
- (c) For a challenge to be admissible, it must be sent by a party either within fifteen (15) days from receipt by that party of the notification of appointment of the commissioner, or within fifteen (15) days from the date when the party making the challenge was informed of the facts and circumstances on which the challenge is based or within fifteen (15) days after the facts and circumstances which the challenge became known to that party.
- (d) When a commissioner has been challenged by one party, the other party may agree to the challenge, in which case the commissioner shall be removed. The commissioner may also, after the challenge, withdraw from his appointment. If the parties do not agree on the challenge and the commissioner does not willingly withdraw from his appointment, the court shall decide on the admissibility, and at the same time, if necessary on the merits of the challenge after it has afforded an opportunity for the arbitrator concerned, the other party or parties, and any other commissioner, if any, to comment in writing within a suitable period of time not

exceeding thirty (30) days. Such comments shall be communicated to the parties and to the commissioners, if any.

(e) If a commissioner is removed through challenge, or in the event of death or resignation, the procedure provided in Section 5 hereof shall be used in full for the appointment of the substitute commissioner, even if during the process of appointing the challenged commissioner, a party had failed to exercise its right to appoint or to participate in the appointment.

**SEC. 17.8. *Order of reference; powers of the commissioner.*** — When a reference is made, the clerk of court shall forthwith furnish the commissioner or panel of commissioners, as the case may be, with a copy or copies of the order/s of reference. The order/s may specify or limit the powers of the commissioner/s, and may direct him or her to report only upon particular issues identified in the Pre-trial Order, or to do or perform particular acts, or to receive and report evidence only, and may fix the date for beginning and closing the hearings and for the filing of his report. Subject to the specifications and limitations stated in the order/s, the commissioner/s have and shall exercise the power to regulate the proceedings in every hearing before him or her and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. he or she or she may issue subpoenas and subpoenas *duces tecum*, swear witnesses, and unless otherwise provided in the order of reference, he or she or she may rule upon the admissibility of evidence.

**SEC. 17.9. *Oath of Commissioner.*** — Before entering upon his duties, the commissioner shall be sworn to a faithful and honest performance thereof.

**SEC. 17.10. *Proceedings before commissioner.*** — The trial or hearing before the commissioner or panel of commissioner shall proceed in all respects as it would if held before the court in accordance with the procedures provided in the rule on Face-to-Face Trial. Upon receipt of the order of reference and unless otherwise provided therein, the commissioner/s shall forthwith set a time and place for the first meeting of the parties or their counsel to be held within ten (10) days after the date of the order of reference and shall notify the parties or their counsel.

**SEC. 17.11. *Report and/or Decision of commissioner/s.*** — Upon the completion of the trial or hearing or proceeding before the commissioner/s, the commissioner/s shall file with the court, within six (6) months from the last day of trial, hearing or proceeding, his report and/or decision, in writing upon the matters submitted to him or her by the order of reference. When his powers are not specified or limited, he or she or she shall set forth his findings of fact and conclusions of law in his report and/or decision. he or she or she shall attach thereto all exhibits, affidavits, depositions, papers and the transcripts, if any, of the testimonial evidence presented before him. The report and/or decision of the commissioner or panel of commissioners shall be binding on the parties and the court.

**SEC. 17.12. Form and Effect of Report and/or Decision of commissioner/s. —**

- (a) The report and/or decision shall be made in writing, stating the reasons upon which it is based.
- (b) The report and/or decision shall be final and binding on the parties and the court. By submitting the dispute to trial by commissioner/s under this Rule, the parties undertake to carry out any report and/or decision made by the commissioner/s without delay and shall be deemed to have waived their right to any form of recourse insofar as such waiver can be validly made.
- (c) The report and/or decision of the commissioner/s are considered as the final order of the court, or as part thereof, as the case may be. As such, it is subject to the ordinary modes of appeal as provided in these Rules.

**SEC. 17.13. *Compensation of commissioner/s.*** — The court shall allow the commissioner/s such reasonable compensation, taking into account the complexity of the subject-matter, the amount in dispute, if any, the time spent by the commissioner/s and any other relevant circumstances of the case, to be taxed as costs against the defeated party, or apportioned, as justice requires.

Such compensation is exclusive of the travel and other expenses that may be incurred by the commissioner/s, in relation to, and during the course of the trial, which is subject to validation by the court.

## TITLE V: MODES OF DISCOVERY

### Rule 1

#### **MODES OF DISCOVERY BEFORE ACTION (R24)**

**SECTION 1.1.** *Depositions before action; petition.* — A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in any court of the Philippines, may file a verified petition in the court of the place of residence of any expected adverse party. (1)

**SEC. 1.2.** *Contents of petition.* — The petition shall be entitled in the name of the plaintiff and shall show that:

- (a) the plaintiff expects to be a party to an action in a court of the Philippines but is presently unable to bring it or cause it to be brought;
- (b) the subject matter of the expected action and the **plaintiff's** interest therein;
- (c) the facts **sought to be** established by the proposed testimony and the reasons for perpetuating it;
- (d) the names or descriptions of the **expected adverse** parties and their addresses so far as known; and
- (e) the names and addresses of the persons to be examined and the judicial affidavits of each, attaching, identifying and authenticating thereto all relevant documentary and object evidence.

The petition shall also pray for an order authorizing the plaintiff to take the depositions of the persons to be examined named in the petition to their testimony. (2a)

**SEC. 1.3.** *Production or inspection before action; petition.* — A person, not in possession, control, or custody of documents or things, who intends to use them in any matter that may be recognizable in any court of the Philippines may file a verified petition in the court of the place of residence of any expected adverse party. (n)

**SEC. 1.4.** *Contents of petition.* — The petition shall be entitled in the

name of the plaintiff and shall show that:

- (a) the matters enumerated in Section 1.2 (a) and (b) of this Rule;
- (b) the facts sought to be established by the documents or things to be produced or inspected;
- (c) the names or descriptions of the expected adverse parties and their addresses so far as known;
- (d) the description and addresses of the persons in possession, control, or custody of the documents or things to be produced or inspected; and
- (e) the description of the documents or things to be produced or inspected. (n)

**SEC. 1.5. *Examination before action; petition.*** — A person who intends to introduce in evidence his own mental or physical condition or that of another person regarding a matter in which the mental or physical condition of a party is in issue, may file a verified petition in the court of the place of residence of any expected adverse party. (n)

**SEC. 1.6. *Contents of petition.*** — The petition shall be entitled in the name of the plaintiff and shall show that:

- (a) the matters enumerated in Section 2(a) and (b) of this Rule;
- (b) the facts which he or she or she desires to establish by the mental or physical examination;
- (c) the names or description of the expected adverse parties and their addresses so far as known; and
- (d) the name and address of the person to be examined. (n)

**SEC. 1.7. *Notice and service.*** -The plaintiff shall serve upon each person named in the petition as an expected adverse party a copy of the petition and a notice stating that the plaintiff will apply to the court for the order described in the petition at the indicated time and place. At least thirty (30) days before the date of the hearing, the court shall cause notice thereof to be served on the parties and prospective deponents in the manner provided for service of summons. (3a)

**SEC 1.8. *Comment or opposition to the petition.*** — A person served with a notice of the petition shall have fifteen (15) days upon its receipt to file a comment or opposition. The court shall grant or deny the petition within fifteen (15) days from receipt of the last comment or opposition or upon the lapse of the period to file the same. (n)

**SEC. 1.9. *Order and examination.*** — If the court is satisfied that the perpetuation of the testimony, production or inspection of documents or things, and mental and physical examination, may prevent a failure or delay of justice, it shall issue an order granting the petition.

An order granting the perpetuation of testimony shall designate the time and place for the affirmation of the deponents' judicial affidavits and the conduct of the cross-examination, re-direct examination and re-cross examination of the deponents. The depositions may then be taken in accordance with Title V, Rule 2 before the hearing.

An order granting the production and inspection of documents and things shall direct any party to:

- (a) produce and permit the inspection and copying or photographing, by or on behalf of the applicant, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody or control; or
- (b) permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon. The order shall specify the time, place and manner of making the inspection and taking copies and photographs, and may prescribe such terms and conditions as are just.

An order granting mental or physical examination shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made. (4a)

**SEC. 1.10. *Reference to court.*** — For the purpose of applying Title V, Rule 2 to depositions for perpetuating testimony, any reference to the

court where the action is pending shall be deemed to refer here to the court where the petition perpetuating testimony was filed. (5a)

**SEC. 1.11. *Use of deposition.*** — If a deposition to perpetuate testimony is taken under this Rule, or if, although not so taken, it would be admissible in evidence, it may be used in any action involving the same subject matter subsequently brought in accordance with the provisions of Sections 2.4 and 2.6 of Title IV. (6)

## Rule 2

### DEPOSITIONS PENDING ACTION (R23)

**SECTION 2.1. *Depositions pending action, when may be taken.*** — At the instance of any party, the testimony of any person may be taken: (a) by leave of court, after jurisdiction has been obtained over any defendant or over property which is the subject of the action; or (b) without such leave, after an answer has been served. The attendance of witnesses may be compelled by the use of a subpoena as provided in Title IV, Rule 17. Depositions shall be taken only in accordance with these Rules.

The deposition of a person confined in prison may be taken only by leave of court on such terms as the court may prescribe. (1a)

**SEC. 2.2. *Scope of examination.*** — Unless otherwise ordered by the court as provided by Sections 2.17 and 2.19 of this Rule, the deponent may be examined regarding any unprivileged matter relevant to the subject of the pending action, whether relating to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of relevant facts. (2)

**SEC. 2.3. *Examination and cross-examination.*** — Examination and cross-examination of deponents may proceed, as permitted, at the trial under Sections 3 to 18 of Rule 132. (3)

**SEC. 2.4. *Use of depositions.*** — At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the Rules of Evidence, may be used against any party who was present or represented at the taking of the deposition, or who had due notice thereof. Its use shall be in accordance with any one of the following provisions:

- (a) The deposition of any person may be used as the deponent's direct testimony if presented as a witness, subject to the right of the opposing party to conduct additional cross-examination. It may also be used to contradict or impeach the testimony of the deponent as a witness.
- (b) The deposition of a party or of any one who, at the time of taking the deposition, was an officer, director, or managing agent of a public or private corporation, partnership, or association which is a party may be used by an adverse party for the same purposes in paragraph (a) hereof;
- (c) The deposition of any person may be used by any party for any purpose if the court finds that: (1) the witness had died; or (2) the witness resides more than one hundred (100) kilometers from the place of trial or hearing, or is out of the Philippines, unless it appears that his or her absence was **caused** by the party offering the deposition; or (3) the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (4) the party offering the deposition has been unable to **secure** the attendance of the witness by subpoena; or (5) upon application and notice, such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used; and
- (d) If only part of a deposition is offered in evidence by a party, the adverse party may require him or her to introduce all that is relevant to the part introduced, and any party may introduce any other parts. (4a)

*SEC. 2.5. Subpoena for depositions.* — The subpoena may be issued by the court where the deposition is to be submitted and before which the related action is pending.

Proof of service of a notice to take a deposition, as provided in Sections 17, shall constitute sufficient authorization for the issuance of subpoenas for the persons named in said notice by the court where the action

is pending. The clerk shall not, however, issue a subpoena *duces tecum* to any such person without an order of the court. (n)

SEC. 2.6. *Effect of substitution of parties.* — Substitution of parties does not affect the right to use depositions previously taken; and, when an action has been dismissed and another action involving the same subject is thereafter brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. (5)

SEC. 2.7. *Objections to admissibility.* — Subject to the provisions of Section 2.29 of this Rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness was then present and testifying. (6)

SEC. 2.8. *Effect of taking depositions.* — A party shall not be deemed to make a person his or her own witness for any purpose by taking his or her deposition. (7)

SEC. 2.9. *Effect of using depositions.* — The introduction in evidence of the deposition or any part thereof for any purpose, other than that of contradicting or impeaching the deponent, makes the deponent the witness of the party introducing the deposition, provided that this shall not apply to the use by an adverse party of a deposition as described in Section 2.4 (b) of this rule. (8)

SEC. 2.10. *Rebutting deposition.* — At the trial or hearing, any party may rebut any relevant evidence contained in a deposition whether introduced by him or her or by any other party. (9)

SEC. 2.11. *Persons before whom depositions may be taken within the Philippines.* — Within the Philippines, depositions may be taken before any judge, notary public, or the person referred to in Section 2.15 of this rule. (11)

SEC. 2.12. *Persons before whom depositions may be taken in foreign countries.* — In a foreign state or country, depositions may be taken: (a) on notice before a secretary of embassy or legation, consul general, consul, vice-consul, consular agent of the Republic of the Philippines; (b) before such person or officer as may be appointed by commission or under letters

rogatory; or (c) the person referred to in Section 2.15 of this rule. (11)

**SEC. 2.13. *Commission or letters rogatory.*** — A commission or letters rogatory shall be issued only when necessary or convenient, on application and notice, and on such terms and with such direction as are just and appropriate. Officers may be designated in notices or commissions either by name or descriptive title and letters rogatory may be addressed to the appropriate judicial authority in the foreign country. (12)

**SEC. 2.14. *Disqualification by interest.*** — No deposition shall be taken before a person: (a) who is a relative within the sixth degree of consanguinity or affinity, or employee or counsel of any of the parties; (b) who is a relative within the same degree, or employee of such counsel; or (c) who is financially interested in the action. (13)

**SEC. 2.15. *Stipulations regarding taking of depositions.*** — If the parties so stipulate in writing, depositions may be taken before any person authorized to administer oaths, at any time or place, in accordance with these Rules, and when so taken may be used like other depositions. (14)

**SEC. 2.16. *Deposition upon oral examination; notice; time and place.*** — A party desiring to take the deposition of any person upon oral examination shall give a reasonable written notice of not less than fifteen (15) days before affirmation hearing to every other party to the action. The notice shall: (a) include the judicial affidavit of each intended deponent executed in accordance with these Rules; and (b) state the time and place for the affirmation of the deponent's judicial affidavit and the conduct of his or her cross-examination, re-direct examination and re-cross examination. On motion of any party upon whom the notice is served, the court may for cause shown extend or shorten the time.

When the witness is hostile, unwilling, or adverse, his or her direct examination, in lieu of his or her judicial affidavit, shall be taken subject to the provisions on subpoena under Section 2.5 of this rule. (15a)

**SEC. 2.17. *Orders for the protection of parties and deponents.*** — After notice for taking a deposition by oral examination is served, any party or the person to be deposed may, upon good cause shown, move that the court where the action is pending issue an order that:

- (a) the deposition shall not be taken, or that it may be taken

only at a designated place other than that stated in the notice;

- (b) it may be taken only on written interrogatories;
- (c) certain matters shall not be inquired into, or that the scope of the examination shall be held with no one present except the parties to the action and their officers or counsel; and
- (d) after being sealed, the deposition shall be opened only by order of the court, or that secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court; or protecting the party or witness from annoyance, embarrassment, or oppression as justice may require.

If the deposition is allowed, the judicial affidavit of the deponent previously submitted shall serve as the direct testimony of the deponent. The adverse party shall be allowed to object to the questions and answers contained in the judicial affidavit and the court shall rule upon each objection in accordance with these Rules. The conduct of the deposition insofar as the cross-examination, re-direct examination and re-cross examination shall be governed by this Rule. (16a)

**SEC. 2.18. *Record of examination; oath.*** — The officer before whom the judicial affidavit of the deponent will be affirmed, or before whom the oral examination is to be taken shall put the witness on oath and shall personally, or by someone acting under his or her direction and in his or her presence, record the testimony of the witness. The testimony shall be recorded stenographically or by other effective and reliable means such as but not limited to audio recording, videotaping or video recording.

In lieu of participating in the affirmation of the judicial affidavit of the deponent and the cross-examination thereof, parties served with notice of taking a deposition may submit written interrogatories, which must be served at least one (1) day before the date of deposition, to the officers, who shall propound them to the witness and record the answers verbatim. (17a)

**SEC. 2.19. *Objections during examination.*** - All objections made, at

the time of the examination, to the qualifications of the officer taking the deposition, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. (17)

SEC. 2.20. *Motion to terminate or limit examination.* — At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the Regional Trial Court of the place where the deposition is being taken may order the officer conducting the examination to cease from taking the deposition, or limit the scope and manner of the taking of the deposition, as provided in Section 2.17 of this Rule.

If the examination is terminated, it shall be resumed only upon the order of the court in which the action is pending. Upon manifestation of the objecting party or deponent, the taking of the deposition shall be suspended for a period necessary to make a notice for an order. In granting or refusing such order, the court may impose upon either party or upon the witness the payment of such costs or expenses as the court may deem reasonable. (18a)

SEC. 2.21. *Submission to witness; changes; authentication.* — When the oral deposition is concluded, the deposition shall be submitted to the witness for review unless the same is waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness. The deposition shall then be signed or authenticated by the witness, unless the parties by stipulation waive the signing or authentication, or the witness is ill or cannot be found or refuses to sign.

If the deposition is not signed by the witness, the officer shall sign it and state on the record the reason therefor. The deposition may then be used as fully as though signed, unless on a motion to suppress under Section 29(e) of this Rule, the court holds that the reasons given for the refusal to sign is meritorious and justifies the rejection of the deposition in whole or in part. (19a)

SEC. 2.22. *Certification and filing by officer.* — The officer taking

the deposition shall: (a) certify on the deposition that the witness was duly sworn to and that the deposition is a true record of the proceedings of the witness; (b) securely seal the deposition in an envelope indorsed with the title of the action and marked “Deposition of (insert the name of witness)”; (c) promptly file it personally or by registered mail with the court in which the action is pending; and (d) retain a copy of the deposition.

Two (2) copies of the stenographic notes or recordings shall be submitted to the court: one (1) for the court and one (1) for the party or deponent. (20a)

SEC. 2.23. *Notice of filing and furnishing of copies.* — The officer taking the deposition shall give prompt notice of its filing to all the parties. And upon request and payment of reasonable charges, the party or the deponent shall be furnished by the officer a copy of the deposition. (21 and 22a)

SEC. 2.24. *Failure to attend of party giving notice.* — If the party giving the notice of deposition fails to attend and proceed therewith and another party attends in person or by counsel pursuant to the notice, the court may order the party giving the notice to pay such other party the amount of the reasonable expenses incurred by him or her and his or her counsel in so attending, including reasonable attorney's fees. (23)

SEC. 2.25. *Failure of party giving notice to serve subpoena.* — If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him or her and the witness because of such failure does not attend, and if another party attends in person or by counsel, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him or her and his or her counsel in so attending, including reasonable attorney's fees. (24)

SEC. 2.26. *Officers to take responses and prepare record.* — A copy of the notice and copies of all interrogatories served shall be submitted by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Sections 2.18, 2.19, 2.21 and 2.22 of this Rule, to take the testimony of the witness in response to the interrogatories and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the interrogatories received by him. (26)

SEC. 2.27. *Notice of filing and furnishing copies.* — When a deposition upon interrogatories is filed, the officer taking it shall promptly give notice of its filing to all the parties. And upon request and payment of reasonable charges, the party or the deponent shall be furnished by the officer a copy of the deposition. (27a)

SEC. 2.28. *Orders for the protection of parties and deponents.* — After the service of the interrogatories and prior to the taking of the testimony of the deponent, a party or a deponent may move, upon showing good cause, for the issuance of an order: (a) specified in Sections 2.16, 2.17 and 2.20 of this Rule which is appropriate and just; (b) that the deposition shall not be taken before the officer designated in the notice or (c) that it shall not be taken except upon oral examination. (28a)

SEC. 2.29. Effect of errors and irregularities in depositions. —

- (a) *As to notice.* — All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.
- (b) *As to disqualification of officer.* — Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition or thereafter as soon as the disqualification becomes known or could be discovered with reasonable diligence.
- (c) *As to competency or relevancy of evidence.* — Objections to the competency of a witness or the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.
- (d) *As to oral examination and other particulars.* — Errors and irregularities occurring at the oral examination in the manner of taking the deposition, form of the questions or answers, oath or affirmation, or conduct of the parties and errors of any kind which might be obviated, removed, or cured if promptly prosecuted, are waived

unless reasonable objection is made at the taking of the deposition.

- (e) *As to manner of preparation.* — Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Sections 2.18, 2.19, 2.21, 2.22, and 2.26 of this Rule are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained. (29a)

### Rule 3

#### INTERROGATORIES TO PARTIES (R25)

SECTION 3.1. *Interrogatories to parties; service thereof.* — Under the same conditions specified in Section 2.1 of Title IV any party desiring to elicit material and relevant facts from any adverse party shall file and serve upon the latter written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer thereof competent to testify in its behalf.

The interrogatories shall be prepared in the language known to the adverse party and, if not in English or Filipino, accompanied by a translation in English or Filipino. (1)

SEC. 3.2. *Answer to interrogatories.* — The interrogatories shall be answered fully in writing, 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 counsel present while the adverse party was answering the interrogatories and the place where the interrogatories were answered;
- (c) a statement that the witness answered the interrogatories, fully conscious that he or she or she does so under oath, and that he or she or she may face criminal liability for

false testimony or perjury;

(d) questions asked of the adverse party and his or her corresponding answers, consecutively numbered, that:

1. show the circumstances under which the adverse party acquired the facts upon which he or she or she testifies;
2. elicit from him or 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 adverse party over his or her printed name;

(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; and

(g) a sworn attestation at the end executed by the counsel present while the adverse party was answering the interrogatories, to the effect that he or she or she faithfully recorded or caused to be recorded the questions he or she or she asked and the corresponding answers that the witness gave; and neither he or she or she nor any other person then present or assisting him or her coached the witness regarding the latter's answers.

A false attestation shall subject the counsel mentioned to disciplinary action, including disbarment. (2a)

**SEC. 3.3. *Period to file answers to interrogatories.*** - The party upon whom the interrogatories have been served shall file and serve a copy of the answers on the party submitting the interrogatories within fifteen (15) days after receipt of the interrogatories, unless the court, on motion and for good cause shown, extends or shortens the time. (2a)

**SEC. 3.4. *Objections to interrogatories.*** — Objections to any interrogatories may be presented to the court within fifteen (15) days after service thereof to the party serving the interrogatories, who shall also have

fifteen (15) days from receipt of the objections to comment on it. The court shall resolve whether the objections are proper or not within fifteen (15) days from receipt of the comment or upon expiration of the period to file the same. Until the court resolves whether the objections are proper or not, answers shall be deferred. (3)

SEC. 3.5. *Number of interrogatories.* — Only with leave of court may a party serve more than one set of interrogatories to be answered by the same party. (4a)

SEC. 3.6. *Scope and use of interrogatories.* — Interrogatories may relate to any matters that can be inquired into under Section 2.2 of Title IV, and the answers may be used for the same purposes provided in Section 2.4 also of Title IV. (5)

SEC. 3.7. *Effect of failure to serve written interrogatories.* — Unless thereafter allowed by the court for good cause shown and to prevent a failure of justice, a party not served with written interrogatories may not be compelled by the adverse party to give testimony in open court, or to give a deposition pending appeal. (6)

SEC. 3.8. *Effect of failure to serve and file answer to interrogatories.* — If a party fails without any justifiable reason to serve and file answers to interrogatories duly served under this Rule, the party serving the interrogatories may file a motion seeking the following reliefs: a) strike out all or any part of any pleading of that party; b) dismiss the action or proceeding or any part thereof; c) enter a judgment by default against that party; or d) payment by the failing party of reasonable expenses incurred by the other party, including attorney's fees. (n)

## Rule 4

### ADMISSION BY ADVERSE PARTY (R26)

SECTION 4.1. *Request for admission.* — At any time after issues have been joined, a party may file and serve upon any other party a written request for the admission by the latter of the genuineness of any material and relevant document described in and exhibited with the request or of the truth of any material and relevant matter of fact set forth in the request. Copies of the documents shall be delivered with the request unless copies have already been furnished. (1)

SEC. 4.2. *Implied admission.* — Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, which shall not be less than fifteen (15) days after its service, or within such further time as the court may allow on motion, the requested party files and serves upon the requesting party a sworn statement either denying specifically the matters sought to be admitted or setting forth in detail the reasons why the requested party cannot truthfully admit or deny the matters.

Objections to any request for admission shall be submitted to the court by the requested party within the period for and prior to the filing of his or her sworn statement as contemplated in the preceding paragraph. The requesting party shall have fifteen (15) days within which to file his or her comment to the objections. The trial court shall determine whether the objections are proper or not after the receipt of the comment or the expiration of the period within which to file the same. In the meantime, compliance with the request for admission shall be deferred until such objections are resolved by the trial court. (2a)

SEC. 4.3. *Effect of admission.* — Any admission made pursuant to a request is for the purpose of the pending action only and shall not constitute an admission for any other purpose nor may the same be used against the requested party in any other proceeding. (3)

SEC. 4.4. *Withdrawal.* — The court may allow the party to withdraw or amend an admission made under this Rule, whether express or implied, upon such terms as may be just. (4)

SEC. 4.5. *Effect of failure to file and serve request for admission.* — Unless otherwise allowed by the court for good cause shown and to prevent failure of justice, a party who fails to file and serve a request for admission on the adverse party of material and relevant facts at issue which are, or ought to be within the personal knowledge of the latter, shall be not be permitted to present evidence on such facts. (5)

## Rule 5

### PRODUCTION OR INSPECTION OF DOCUMENTS OR THINGS (R27)

SECTION 5.1. *Motion for production or inspection order.* — Upon

motion of a party showing good cause therefor, the court in which an action is pending may order another party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated relevant and unprivileged (a) documents papers, books, accounts, letters, photographs, objects or tangible things; or (b) information generated, sent, or received by electronic, optical or similar means which are stored in any medium from which information can be obtained directly or, if necessary, after translation by the responding party into a reasonably usable form. Such documents or medium of storage must be in the responding party's possession, custody or control. (1a)

**SEC. 5.2. *Motion for entry into property.*** - Upon motion of a party showing good cause therefor, the court where the action is pending may order another party to permit entry upon designated land or other property under possession or control of the latter for the purpose of inspecting measuring, surveying, or photographing the property or any designated relevant object or operation thereon. (1a)

**SEC. 5.3. *Order of the court.*** - The order shall specify the time, place and manner of making the inspection and taking of copies and photographs, and may prescribe such terms and conditions as are just. (1a)

## Rule 6

### PHYSICAL AND MENTAL EXAMINATION OF PERSONS (R28)

**SECTION 6.1. *When examination may be ordered.*** — In an action in which the mental or physical condition of a party or the paternity of an individual is in controversy, the court in which the action is pending may order the necessary physical or mental examination. The order may be made only upon motion for good cause shown and upon notice to the party to be examined and all the other parties specifying the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made,

The adverse party may file his or her opposition/comment to the motion within fifteen (15) days from receipt of the motion. The trial court shall resolve the motion within fifteen (15) days from the filing of the opposition/ comment or the lapse of the period within which to file the same. (1a and 2a)

SEC. 6.2. *Expenses for the examination.* — The order shall also direct the movant to advance the expenses to be incurred by the party to be examined. If the movant lacks the financial capacity to pay the expenses as determined by the court, the examination may be done in any government institution and by a government physician free of charge. (2a)

SEC. 6.3. *Report of findings.* — The examining physician shall furnish the party examined with a copy of the report containing the findings and conclusion of the examination. The party examined shall then file with the court and serve on the adverse party the examiner's report, personally or by licensed courier service, within fifteen (15) days after receipt of the report.

If the party examined refuses to file or serve such report, the adverse party may file a motion praying for the compliance by the party examined. The party examined shall have fifteen (15) days within which to file his or her comment. Thereafter, the trial court, within fifteen (15) days from receipt of the comment or the expiration of the period to file the same, shall resolve the motion. If the motion is meritorious, the court shall order the party examined and the examiner to deliver the report to the movant and the court. If the report is not delivered to the court, the contents of such report shall be presumed to be adverse to the party examined. Further, if a physician fails or refuses to make such report, the trial court may exclude his or her testimony if offered at the trial. (3a)

SEC. 6.4. *Waiver of privilege.* — By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he or she or she may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him or her in respect of the same mental or physical examination. (4)

## Rule 7

### DEPOSITIONS PENDING APPEAL (R24)

SECTION 7.1. *Depositions pending appeal.* — If an appeal has been taken from a judgment of a court, including the Court of Appeals in proper cases, or before the period to appeal has not expired, the court in which the judgment was rendered may allow the taking of depositions of witnesses to

perpetuate their testimony for use in the event of further proceedings in the said court. In such case the party who desires to perpetuate the testimony may file a motion in the said court for leave to take the depositions, upon the same notice and service thereof as if the action was pending therein. (7a)

**SEC. 7.2. *Contents of motion.* — The motion shall state:**

- (a) the names and addresses of the persons to be examined and the substance of the testimony which the movant expects to elicit from each; and
- (b) the reason for perpetuating their testimony.

If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may issue an order allowing the deposition. (n)

**SEC. 7.3. *Notice.* —** At least thirty (30) days before the date of hearing, the court shall cause notice to be served on the parties and prospective deponents in the manner provided for service of summons. (n)

**SEC. 7.4. *Applicable rule.* —** The rule on depositions pending action under Rule 2 of Title IV shall apply to depositions pending appeal. (n)

## Rule 8

### REFUSAL TO COMPLY WITH MODES OF DISCOVERY (R29)

**SECTION 8.1. *Refusal to answer.* —** If a party or other deponent refuses to answer any question upon oral examination, the examination may be completed on other matters or adjourned as the proponent of the question may prefer. The proponent may thereafter apply to the proper court of the place where the deposition is being taken, for an order to compel an answer. The same procedure may be availed of when a party or a witness refuses to answer any interrogatory submitted under Rule 2 and Rule 3 of Title IV.

If the application is granted, the court shall require the refusing party or deponent to answer the question or interrogatory and if it also finds that the refusal to answer was without substantial justification, it may require the refusing party or deponent or the counsel advising the refusal, or both of them, to pay the proponent the amount of the reasonable expenses incurred in obtaining the order, including attorney's fees.

If the application is denied and the court finds that it was filed without substantial justification, the court may require the proponent or the counsel advising the filing of the application, or both of them, to pay to the refusing party or deponent the amount of the reasonable expenses incurred in opposing the application, including attorney's fees. (1)

SEC. 8.2. *Contempt of court.* — If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the court of the place in which the deposition is being taken, the refusal may be considered a contempt of that court. (2)

SEC. 8.3. *Other consequences.* — If any party or an officer or managing agent of a party refuses to obey an order made under: a) Section 8.1 requiring him or her to answer designated questions, b) Rule 5 to produce any document or other thing for inspection, copying, or photographing or to permit it to be done, or to permit entry upon land or other property, or c) Rule 6 requiring him or her to submit to a physical or mental examination, the court may make such orders in regard to the refusal as are just, and among others, the following:

- (a) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or the physical or mental condition of the party, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
- (b) An order refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibiting him or her from introducing in evidence designated documents or things or items of testimony, or from introducing evidence of physical or mental condition;
- (c) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party; and
- (d) In lieu of any of the foregoing orders or in addition

thereto, an order directing the arrest of any party or agent of a party for disobeying any of such orders except an order to submit to a physical or mental examination. (3)

SEC. 8.4. *Expenses on refusal to admit.* — If a requested party, after being served with a request to admit the genuineness of any document or the truth of any matter of fact under Rule 4 of Title IV, serves a sworn denial thereof but the requesting party thereafter proves otherwise, the requesting party may apply to the court for an order requiring the requested party to pay the reasonable expenses incurred in making such proof, including attorney's fees. The court shall issue the order unless it finds that there were good reasons for the denial or that admissions sought were of no substantial importance. (4a)

SEC. 8.5. *Failure of party to attend or serve answers.* — If a party or an officer or managing agent of a party willfully fails to appear before the officer who is to take his or her deposition, the adverse party may file a motion praying that the trial court strike out all or any part of any pleading of that party, or dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party, and in its discretion, order him or her to pay reasonable expenses incurred by the other, including attorney's fees. The other party shall have fifteen (15) days to file his or her comment. And the court shall resolve the motion within fifteen (15) days from receipt of the comment or the lapse of the period to file the same. (5a)

SEC. 8.6. *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 deposition or refuses without just cause to make the relevant books, documents, or other things under his or her control available for copying, authentication, and eventual production in court, the requesting party may avail himself of the issuance of a subpoena *ad testificandum* or *duces tecum*, without prejudice to any administrative action that may be taken against such employee or official, or requested witness, under the rules on subpoena. (n)

SEC. 8.7. *Expenses against the Republic of the Philippines.* — Expenses and attorney's fees are not to be imposed upon the Republic of the Philippines under this Rule. (6)

## **TITLE VI: REGULAR AND SPECIAL MOTIONS**

### **Rule 1**

#### **MOTIONS (R15)**

SECTION 1.1. *Motion defined.* — A motion is an application for relief while an action is pending and until the proceedings are terminated. (1a)

SEC. 1.2. *Motions must be in writing.* — All motions shall be in writing except those made in open court or in the course of a hearing or trial. (2)

SEC. 1.3. *Contents.* — A motion shall state the relief being sought and the grounds upon which it is based, and if required by these Rules or necessary to prove the alleged facts, shall be accompanied by supporting judicial affidavits and other papers. Failure to do so shall be deemed a waiver of their submission. (3a)

SEC. 1.4. *Hearing of motion discretionary.* — No hearing on a written motion shall be permitted unless the court, at its discretion, requires it to resolve factual issues.

In lieu of a hearing, every motion shall be subject to comment or opposition to be filed and served by the adverse party to the movant within a non-extendible period of fifteen (15) days from receipt of the motion without need of a court order. No reply shall be filed unless so ordered by the court. The motion shall be deemed submitted for resolution after the filing of the last required pleading or the lapse of the period to file the same. (n)

SEC. 1.5. *Proof of service and expiration of time to file comment or opposition necessary.* — No written motion shall be acted upon by the court without proof of service thereof and until the time within which to file comment or opposition expires.

Every motion, comment, and such other pleading allowed by the court shall be accompanied by proof of service as referred to in Section 14.14 of Title III. (n)

SEC. 1.6. *Omnibus motion.* — A motion attacking a pleading, order, judgment, or proceeding shall include all objections then available, and all

objections not so included shall be deemed waived.

No written motion shall be allowed to be filed after the commencement of the trial on the merits, unless with leave of court and upon justifiable grounds. (8a)

SEC. 1.7. *Mandatory period to resolve motion.* — All motions already filed shall be resolved before the commencement of the face-to-face trial. (n)

SEC. 1.8. *Motion for reconsideration of an interlocutory order.* — A motion for reconsideration on an interlocutory order shall be filed within fifteen (15) days from receipt of the order, however the filing thereof shall not suspend the trial of the case. (n)

SEC. 1.9. *Motion for leave.* — A motion for leave to file a pleading or motion shall be accompanied by the pleading or motion sought to be admitted. (9)

## Rule 2

### INTERVENTION (R19)

SECTION 2.1. *Who may intervene.* — A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, upon motion, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding. (1a)

SEC. 2.2. *Time to intervene.* — The motion to intervene may be filed at any time before rendition of judgment by the trial court. A copy of the pleading-in-intervention, together with the corresponding judicial affidavits of the witnesses of the movant-intervenor, shall be attached to the motion and served on the original parties.

The original parties may file their respective comments within fifteen (15) days from receipt of the motion to intervene, the pleading-in-intervention and its accompanying judicial affidavits. The intervenor may

file a reply within a non-extendible period of fifteen (15) days from receipt of the comment.

The court shall resolve the motion within fifteen (15) days from the expiration of the period to file the last applicable responsive pleading. (2a)

SEC. 2.3. *Pleadings-in-intervention.* — The intervenor shall file a complaint-in-intervention if he or she or she asserts a claim against either or all of the original parties, or an answer-in-intervention if he or she or she unites with the defending party in resisting a claim against the latter. (3)

SEC. 2.4. *Responsive pleadings.* — The answer to the complaint-in-intervention shall be filed within thirty (30) days from notice of the order admitting the same, unless a longer period is fixed by the court. A reply may be filed within thirty (30) days from notice of the order admitting the answer-in-intervention, unless a longer period is fixed by the court. (4)

## RULE 3

### NOTICE OF LIS PENDENS (N)

**SECTION 3.1. *Notice of lis pendens.*** — In an action affecting the title or the right of possession of real property, **the plaintiff or the defendant** may record in the office of the registry of deeds of the province in which the property is situated **ex parte** a notice of the pendency of the action when an affirmative relief is claimed in **the answer**. Said notice shall contain the names of the parties and the object of the action or defense, and a description of the affected property in that province. Only from the time of filing such notice for record shall a purchaser, or encumbrancer of the affected property be deemed to have constructive notice of the pendency of the action, and only of its pendency against the parties designated by their real names. (14a, R13)

**SEC. 3.2. *Notice Requirement.*** — In applying for a notice of lis pendens, the applicant shall be required to submit a copy of the application to the adverse party and the registered owner of the affected property. (n)

**SEC. 3.3. *Cancellation.*** — After notice and hearing, the notice of lis pendens may be cancelled only upon order of the court, after the filing of a motion with accompanying judicial affidavits showing that the notice is for

the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be recorded.

At any time after final judgment in favor of the defendant, or other disposition of the action such as to terminate finally all rights of the plaintiff in and to the land, buildings and/or other improvements involved, in any case in which a memorandum or notice of lis pendens has been registered as provided in this rule, the notice of lis pendens shall be deemed cancelled upon the registration of a certificate of the clerk of court in which the action or proceeding was pending stating the manner of disposal thereof. (Adapted from the Presidential Decree No. 1529: The Property Registration Decree) (14a, R13)

#### Rule 4

##### SUSPENSION AND ARCHIVAL OF ACTIONS (N)

SECTION. 4.1. *Motion for suspension or archival.* — The court may, upon motion, order that the case be suspended or archived when (a) the parties are in the process of settlement, or (b) the parties so agree. The court, *motu proprio* or upon motion, may order the revival of the case for trial when there is no more compelling reason to prolong the suspension or archival of the case.

The suspension or archival of an action shall be for a non-extendible period of six (6) months. The non-revival of the action within three (3) months from the expiration of the period of archival shall, *ipso facto*, result in the dismissal of the case without prejudice.

SEC. 4.2. *Injunctive relief from higher court.* — When an injunctive order is issued by a higher court restraining the proceedings, the case shall be archived until the injunctive order is dissolved. The trial court shall then revive the case *motu proprio* or upon motion of any party.

#### Rule 5

##### DISMISSAL OF ACTION BY RESPONDENT (R16)

SECTION. 5.1. *Affirmative defenses.* — A complaint or other initiatory pleading asserting a claim may be dismissed only on the following grounds, which shall be pleaded as affirmative defenses in the answer:

- (a) the court has no jurisdiction over the person of the

defendant not arising from lack or improper service of summons;

- (b) the court has no jurisdiction over the subject matter of the claim;
- (c) venue is improperly laid;
- (d) the plaintiff has no legal capacity or personality to sue;
- (e) a condition precedent for filing the claim has not been complied with;
- (f) the complaint or the initiatory pleading asserting a claim fails to state with sufficient definiteness and particularity the cause of action that will enable the defending party to properly prepare a responsive pleading;
- (g) the complaint or the initiatory pleading fails to state a cause of action;
- (h) there is another action pending between the same parties for the same cause;
- (i) the cause of action is barred by a prior judgment;
- (j) the civil action or liability has prescribed in accordance with the provisions on the statute of limitations;
- (k) the claim set forth has been paid, waived, abandoned, or otherwise extinguished; or
- (l) the contract upon which the action is founded is unenforceable under the provisions of the statute of frauds.

The defendant seeking dismissal of the complaint or initiatory pleading shall include a discussion of the supporting legal arguments and attach the needed judicial affidavits, if factual issues are involved. All grounds not raised shall be deemed waived and forever barred. The claimant shall incorporate his or her or her comment on the affirmative defenses in his or her or her reply within fifteen (15) days from receipt of the answer. (n)

**SEC. 5.2. *Grounds not allowed for outright dismissal.*** – Although (a) lack or improper service of summons; or (b) insufficient payment of docket and other legal fees may be pleaded as affirmative defenses these are not considered grounds for outright dismissal of actions.

If the court determines that there is lack or improper service of summons, the court shall order compliance with the rules on service of summons. And if the court determines that there is insufficient payment of docket and other legal fees required at the commencement of the action, it shall give the plaintiff a period of fifteen (15) days from receipt of the order within which to comply with the Rules. Failure to do so shall be a ground for immediate dismissal of the action without prejudice. (n)

SEC. 5.3. *Hearing discretionary.* — No hearing on the prayer for dismissal based on the affirmative defenses shall be permitted unless necessary for reception of evidence or to clarify factual issues. If the court orders a setting of a hearing, it shall be within fifteen (15) days from the date of issuance of the order. Evidence presented during the hearing shall automatically be part of the evidence of the party presenting the same. (n)

SEC. 5.4. *Order.* — Within fifteen (15) days from the receipt of the reply or the expiration of the period to file the same, the court shall issue an order:

- (a) dismissing the action outright;
- (b) requiring compliance with the provisions of Section 5.2 of this Rule;
- (c) setting a hearing for the reception of evidence or a clarificatory hearing on the affirmative defenses; or
- (d) requiring the parties to file their respective memoranda on the affirmative defenses within a non-extendible period of thirty (30) days from receipt of the order. (n)

SEC. 5.5. *Resolution.* — Upon termination of the hearing or upon submission of the memoranda, the court may dismiss the action or deny the prayer for dismissal and proceed to trial. In every case, the resolution shall state clearly and distinctly the facts and the law upon which the resolution is based. (3a)

SEC. 5.6. *Effect of dismissal.* — Subject to the right of appeal, dismissal of an action based on paragraphs (h), (i), (j), (k), and (l) of Section 1 of this Rule shall bar the refiling of the same action or claim.

The dismissal of the complaint under this Rule shall be without prejudice to the prosecution in the same action of a counterclaim pleaded in

the answer. (5 and 6)

SEC. 5.7. *Dismissal due to fault of plaintiff.* — If for no justifiable cause, the plaintiff fails to present at least one witness during the pre-agreed face-to-face trial or to prosecute his or her action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his or her counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court. (3, R17)

## Rule 6

### **DISMISSAL OF ACTION BY PETITIONER (R17)**

SECTION 6.1. *Dismissal upon notice by plaintiff* — A complaint may be dismissed *ipso facto* upon the instance of the plaintiff by filing a notice of dismissal at any time before service of the answer. Upon receipt of such notice, the court shall issue an order confirming the dismissal. The dismissal shall be without prejudice unless otherwise stated in the notice. A notice, however, operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim. (1)

SEC. 6.2. *Dismissal upon motion of plaintiff.* — Except as provided in the preceding section, a complaint or initiatory pleading shall not be dismissed at the plaintiff's instance save upon approval of the court and upon such terms and conditions as the court deems proper. If counterclaims are pleaded in the answer filed by the defendant prior to the service of the plaintiff's motion for dismissal, the dismissal shall be limited to the complaint.

The dismissal shall be without prejudice to the right of the defendant to prosecute any and all counterclaims in the same action unless within fifteen (15) days from notice of the motion, the defendant manifests preference to have the counterclaims resolved in a separate action. Unless otherwise specified in the order, a dismissal under this paragraph shall be with prejudice.

A class suit shall not be dismissed or compromised without the approval of the court. (2a)

**SEC. 6.3. Dismissal of counterclaim, cross-claim, or third-party complaint.** — This Rule shall apply to the dismissal of any counterclaim, cross-claim, or third-party complaint. A voluntary dismissal by the claimant by notice as in Section 6.1 of this Rule, shall be made before a responsive pleading or a motion for summary judgment or judgment on the pleadings is served or, if there is none, before the commencement of the face-to-face trial. (4)

## Rule 7

### JUDGMENTS BEFORE TRIAL (R34 AND R35)

**SEC. 7.1. Summary judgment before trial.** — A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time before trial but after the pleading in answer thereto has been served, move for summary judgment in his or her favor, upon all or any part thereof. The adverse party may submit additional judicial affidavits, depositions or admissions in support of his or her motion. (1a and 2a, R35)

**SEC. 7.2. Summary judgment before conclusion of trial.** — If in the course of trial, judicial admissions are made by any party, and on the basis thereof, there are no longer any genuine issues as to material facts except as to the amount of damages and the adverse party is entitled to a judgment as a matter of law, a motion for summary judgment may likewise be filed. (n)

**SEC. 7.3. Motion and proceedings thereon.** — The adverse party may oppose the motion and submit supporting judicial affidavits, depositions, or admissions at least fifteen (15) days from receipt of the motion and its annexes. The judgment sought shall be rendered if the pleadings, supporting judicial affidavits, depositions, and admissions on file show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. (3a, R35)

**SEC. 7.4. Case not fully adjudicated on motion.** — If on motion under this Rule, judgment is not rendered upon the whole case or for all the reliefs sought and a trial is necessary, the court at the hearing of the motion,

by examining the pleadings and the evidence before it and by interrogating the counsel of the parties, shall ascertain which material facts exist without substantial controversy and those which are actually and in good faith controverted. The court shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and direct such further proceedings in the action as are just. The uncontested facts shall be deemed established and trial shall proceed with respect to the controverted facts. (4, R35)

## TITLE VII: PROVISIONAL REMEDIES

### Rule 1

#### GENERAL PROCEDURE (N)

SECTION 1.1. *Kinds of provisional remedies.* — Provisional remedies consist of applications for the issuance of: (a) writ of preliminary attachment; (b) writ of preliminary injunction; (c) receivership; (d) writ of replevin; and (e) *support pendente lite*. They shall follow a uniform procedure as prescribed herein, subject to the conditions provided in Rules 2 to 6 of this Title. (n)

SEC. 1.2. *Interim provisional order.* — Pending consideration of the application for the issuance of a provisional remedy, the court may issue a twenty (20)-day interim provisional order as provided in this Rule.

SEC. 1.2. *Application for provisional remedies.* — A party may, through a verified application, seek the issuance of a provisional remedy or an interim provisional order: a) upon filing a complaint or initiatory pleading at the commencement of the action, or b) at any time before entry of judgment.

**In all cases, the application shall state the grounds relied upon and accompanied by: a) the requirements of the particular provisional remedy applied for as provided in Rules 2 to 6 of this Title, b) the supporting judicial affidavits, and c) an undertaking, if required, to post bond, the amount of which is to be determined by the court. (n)**

SEC. 1.3. *Prior or contemporaneous service of summons.* — When a complaint filed in a multi-sala court includes an application for the issuance of a provisional remedy or an interim provisional order, the case shall be raffled only after a notice of raffle is duly served to the adverse party. The executive judge shall, within forty-eight hours (48) hours from the filing of the complaint, cause the service of such notice which shall be preceded or accompanied by a) the summons, b) a copy of the complaint or initiatory pleading, and c) the supporting judicial affidavits. Where the summons could not be served personally or by substituted service despite diligent efforts, or the adverse party is a resident of but temporarily absent from the Philippines or is a non-resident of the Philippines, the requirement of prior

or contemporaneous service of summons shall not apply.

**Applications for the issuance of the writ of attachment or replevin or an interim provisional order of attachment or replevin may be granted either *ex parte* or after hearing, at the court's discretion. In case the application is granted *ex parte*, the service of a notice of raffle is not necessary before the raffle of the case. However, the service of: a) the summons, b) a copy of the complaint or initiatory pleading, c) the supporting judicial affidavits, d) the application for preliminary attachment or replevin, e) the bond and f) the order is required after the application for the issuance of an interim provisional order of attachment or replevin is granted but before such order becomes effective and enforceable.** (n)

**SEC. 1.4. Period for resolving application for interim provisional order.** — The court, to which the application for a provisional remedy was made, may issue an interim provisional order effective for a period of twenty (20) days from service on the adverse party. The court shall decide the application for an interim provisional order within forty-eight (48) hours from receipt of the records of the case but if none is issued within such period, the application is deemed denied. (n)

**SEC. 1.5. Evidentiary hearing.** — If an interim provisional order is granted, the court shall notify the parties of an evidentiary hearing where the applicant shall show with supporting judicial affidavits the grounds relied upon by the application for the provisional remedy and where the adverse party shall show with supporting judicial affidavits why the application should be denied. During the evidentiary hearing, the court, in its discretion, may ask the parties to give opening statements and may, upon completion of the presentation of evidence by both parties, hear the parties on oral arguments. Otherwise, the application for the provisional remedy is deemed submitted for resolution.

**The presentation of evidence and resolution of the application for a provisional remedy shall be made during the twenty (20)-day period of effectiveness of the interim provisional order. The parties should be given sufficient time to present their respective evidence. If necessary the evidentiary hearing shall be conducted in the morning and afternoon of the hearing days. All evidence presented by a party during the evidentiary hearing shall automatically form part of his or her**

evidence in chief.

If no interim provisional order is granted, the same procedure shall be followed. The period to hear and resolve the application shall, however, be twenty-two (22) days from the court's receipt of the records. (n)

SEC. 1.6. *Expiration of the temporary provisional order.* — If the application for a provisional remedy is denied or not resolved within the twenty (20)-day period, the interim provisional order is automatically vacated. The effectiveness of an interim provisional order is not extendible without need of any judicial declaration to that effect. No court shall have the authority to extend or renew the same on the same ground for which it was issued. (n)

SEC. 1.7. *Resolution of the case.* — If a provisional remedy is issued, the court shall decide the main case or petition within six (6) months from its issuance thereof. The failure to resolve the case within the said period will not dissolve the provisional remedy. (n)

SEC. 1.8. *Appointment of assisting sheriff.* — The applicant may ask the court to deputize an assisting sheriff, who is a regularly appointed sheriff assigned to a court other than the court issuing the temporary provisional order or provisional remedy. Once the motion to deputize an assisting sheriff is granted, the guidelines for the implementation of the interim provisional order or provisional remedy will be attached to the court's order. Legal fees shall be assessed and collected for the deputization of an assisting sheriff. (n)

## Rule 2

### PRELIMINARY ATTACHMENT (R57)

**SECTION 2.1. *Grounds upon which attachment may issue.*** — The plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:

- (a) In an action for the recovery of a specified amount of money or damages, other than moral and exemplary, on a cause of action arising from law, contract, quasi-contract,

delict or quasi-delict against a party who is about to depart from the Philippines with intent to defraud his or her creditors or obligee;

- (b) In an action for money or property embezzled or fraudulently misappropriated or converted to his or her own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his or her employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;
- (c) In an action to recover the possession of property unjustly or fraudulently taken, detained or converted, when the property, or any part thereof has been concealed, removed, or disposed of to prevent its being found or taken by the applicant or an authorized person;
- (d) In an action against a party who has been guilty of fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof;
- (e) In an action against a party who has removed or disposed of his or her property, or is about to do so, with intent to defraud his or her creditors; or
- (f) In an action against a party who does not reside and is not found in the Philippines, or on whom summons may be served by publication. (1a)

**SEC. 2.2. *Issuance and contents of order.*** — An order of attachment may be issued **in accordance with Section 1.3** of this Title by the court in which the action is pending, or by the Court of Appeals or the Supreme Court. The order must require the sheriff of the court to attach so much of the property in the Philippines of the party against whom it is issued, not exempt from execution, as may be sufficient to satisfy the applicant's demand unless such party makes a deposit or posts a bond in an amount equal to that fixed in the order, which may be the amount sufficient to satisfy the applicant's demand or the value of the property to be attached as stated by the applicant, exclusive of costs. Several writs may be issued at the same time to the sheriffs of the courts of different judicial regions. (2a)

**SEC. 2.3. *Judicial affidavit and bond required.*** — An order of

attachment shall be granted only when it appears by the **judicial** affidavit of the applicant, or of some other person who personally knows the facts, that:

- (a) a sufficient cause of action exists;
- (b) the case is one of those mentioned in Section 2.1 of this Rule;
- (c) there is no other sufficient security for the claim sought to be enforced by the action; and
- (d) the amount due to the applicant, or the value of the property the possession of which he or she or she is entitled to recover, is as much as the sum for which the order is granted above all legal counterclaims.

The **judicial** affidavit and the bond required by the next succeeding section must be filed with the court before the order issues. (3a)

**SEC. 2.4. Condition of applicant's bond.** — The party applying for the order must thereafter **post** a bond executed to the adverse party in the amount fixed by the court in its order granting the issuance of the writ. The bond is conditioned **upon the applicant's payment of** all the costs which may be adjudged to the adverse party and all the damages sustained by reason of the attachment, if the court **finds** that the applicant was not entitled thereto. (4)

**SEC. 2.5. Manner of attaching property.** — The sheriff enforcing the writ shall without delay and with all reasonable diligence attach, to await judgment and execution in the action, only so much of the property in the Philippines of the party against whom the writ is issued, not exempt from execution, as may be sufficient to satisfy the applicant's demand, unless the former makes a deposit with the court which issued the writ, or gives a counter-bond executed to the applicant, in an amount equal to the bond fixed by the court in the order of attachment or to the value of the property to be attached, exclusive of costs.

**The requirement of prior or contemporaneous service of summons shall not apply where the summons could not be served personally or by substituted service despite diligent efforts, or the defendant is a resident of the Philippines temporarily absent therefrom, or the defendant is a non-resident of the Philippines, or the action is one**

**in rem or quasi in rem. (5a)**

**SEC. 2.6. Sheriff's return.** — After enforcing the writ, the sheriff shall, without delay, make a return to the court which issued the writ, with a full statement of his or her proceedings under the writ and a complete inventory of the property attached, together with any counter-bond given by the party against whom attachment is issued, and serve copies thereof on the applicant. (6)

**SEC. 2.7. Attachment of real and personal property; recording thereof.** — Real and personal property shall be attached by the sheriff executing the writ in the following manner:

- (a) *Real property.* Real property, or growing crops thereon, or any interest therein, standing upon the records of the registry of deeds of the city or province in the name of the party against whom the attachment is issued, or not appearing at all upon such records, or belonging to the party against whom attachment is issued and held by any other persons or standing on the records of the registry of deeds in the name of any other person, by filing with the registry of deeds a copy of the order, together with a description of the property attached, and a notice that it is attached, or that such real property and any interest therein held by or standing in the name of such other person are attached, and by leaving a copy of such order, description, and notice with the occupant of the property, if any, or with such other person or his or her agent if found within the province. Where the property has been brought under the operation of either the Land Registration Act or the Property Registration Decree, the notice shall contain a reference to the number of the certificate of title, the volume and page in the registration book where the certificate is registered, and the registered owner or owners thereof.

The registrar of deeds shall index attachments filed under this section in the names of the applicant, the adverse party, or the person by whom the property is held or in whose name it stands in the records. If the attachment is not claimed on the entire area of the land covered by the certificate of title, a description sufficiently accurate for

the identification of the land or interest to be affected shall be included in the registration of such attachment;

- (b) *Personal property.* Personal property capable of manual delivery, by taking and safely keeping it in his or her custody, after issuing the corresponding receipt therefor;
- (c) *Stocks or shares.* Stocks or shares, or an interest in stocks or shares, of any corporation or company, by leaving with its president, managing agent or corporate secretary a copy of the writ and a notice stating that the stock or interest of the party against whom the attachment is issued is attached in pursuance of such writ;
- (d) *Debts and credits.* Debts and credits, including bank deposits, financial interest, royalties, commissions and other personal property not capable of manual delivery, by leaving with the person owing such debts or having in his or her possession or under his or her control such credits or other personal property or with his or her agent a copy of the writ, and notice that the debts owing by him or her to the party against whom attachment is issued, and the credits and other personal property in his or her possession or under his or her control, belonging to said party are attached in pursuance of such writ;
- (e) *Interests in an estate of a decedent.* The interest of the party against whom attachment is issued in any property belonging to the estate of the decedent, whether as heir, legatee, or devisee, by serving the executor or administrator or other personal representative of the decedent with a copy of the writ and notice that said interest is attached. A copy of said writ of attachment and notice shall also be filed in the office of the clerk the court in which said estate is being settled and served upon the heir, legatee or devisee concerned.

If the property sought to be attached is in *custodia legis*, a copy of the writ of attachment shall be filed with the proper court or quasi-judicial agency, and notice of the attachment served upon the custodian of such property. (7)

**SEC. 2.8. *Effect of attachment of debts, credits and all other similar***

*personal property.* — All persons having in their possession or under their control any credits or other similar personal property belonging to the party against whom attachment is issued, or owing any debts to him, at the time of service upon them of the copy of the writ of attachment and notice as provided in the last preceding section, shall be liable to the applicant for the amount of such credits, debts or other similar personal property, until the attachment is discharged or any judgment recovered by him or her is satisfied, unless such property is delivered or transferred or such debts are paid to the clerk, sheriff, or other proper officer of the court issuing the attachment. (8)

**SEC. 2.9.** *Effect of attachment of interest in property belonging to the estate of a decedent.* — The attachment of the interest of an heir, legatee, or devisee in the property belonging to the estate of a decedent shall not impair the powers of the executor, administrator, or other personal representative of the decedent over such property for the purpose of administration. Such personal representative, however, shall report the attachment to the court when any petition for distribution is filed, and in the order made upon such petition, distribution may be awarded to such heir, legatee, or devisee, but the property attached shall be ordered delivered to the sheriff making the levy, subject to the claim of such heir, legatee, or devisee, or any person claiming under him. (9)

**SEC. 2.10.** Examination of party whose property is attached and persons indebted to him or her or controlling his or her property; delivery of property to sheriff. — Any person owing debts to the party whose property is attached or having in his or her possession or under his or her control any credit or other personal property belonging to such party, may be required to attend before the court in which the action is pending or before a commissioner appointed by the court and be examined under oath respecting the same.

The party whose property is attached may also be required to attend for the purpose of giving information respecting his or her property and may be examined under oath. The court may, after such examination, order personal property capable of manual delivery belonging to him, in the possession of the person so required to attend before the court, to be delivered to the clerk of the court or sheriff on such terms as may be just, having reference to any lien thereon or claim against the same, to await the judgment in the action. (10)

**SEC. 2.11.** *When attached property may be sold after levy on*

*attachment and before entry of judgment.* — Whenever it shall be made to appear to the court in which the action is pending, upon hearing with notice to both parties, that the property attached is perishable, or that the interests of all the parties to the action will be subserved by the sale thereof, the court may order such property to be sold at public auction in such manner as it may direct, and the proceeds of such sale to be deposited in court to abide the judgment in the action. (11)

**SEC. 2.12. *Discharge of attachment upon giving counter-bond.*** — After a writ of attachment has been enforced, the party whose property has been attached or the person appearing on his or her behalf may move for the discharge of the attachment wholly or in part on the security given. **The attaching party shall have fifteen (15) days from receipt of the motion within which to file his or her opposition.**

The court shall order the discharge of the attachment if it is satisfied that the movant has made a cash deposit, or has filed a counter-bond executed in favor of the attaching party, with the clerk of the court where the application is made, in the amount equal to that fixed by the court in the order of attachment, exclusive of costs. But if the attachment is sought to be discharged with respect to a particular property, the counter-bond shall be equal to the value of that property as determined by the court. In either case, the cash deposit or the counter-bond shall secure the payment of any judgment that the attaching party may recover in the action. A notice of the deposit shall forthwith be served on the attaching party.

Upon the discharge of an attachment in accordance with the provisions of this section, the property attached, or the proceeds of any sale thereof, shall be delivered to the party making the deposit or giving the counter-bond, or to the person appearing on his or her behalf, the deposit or counter-bond aforesaid standing in place of the property so released. Should such counter-bond for any reason be found to be or become insufficient, and the party furnishing the same fail to file an additional counter-bond, the attaching party may apply for a new order of attachment. (12a)

**SEC. 2.13. *Discharge of attachment on other grounds.*** — The party whose property has been ordered attached may file a motion, **without the need of a hearing**, with the court in which the action is pending, before or after levy or even after the release of the attached property, for an order to set aside or discharge the attachment on the ground that the same was improperly or irregularly issued or enforced, or that the bond is insufficient.

**If the motion is made on judicial affidavits on the part of the**

**movant, within fifteen (15) days from receipt of the motion to discharge, the attaching party may file its opposition or comment with judicial counter-affidavits in addition to that on which the attachment was made. Thereafter, within fifteen (15) days from the filing of the opposition or comment or from the expiration of the period to file the same, the court shall order the discharge of the attachment if it appears that it was improperly or irregularly issued or enforced, the bond is insufficient, or the attachment is excessive, and the defect is not cured forthwith.**

If the attachment is excessive, the discharge shall be limited to the excess. The court, in the exercise of its discretion, may set the motion for hearing if factual issues are involved or a clarificatory hearing is necessary. The hearing shall be set within fifteen (15) days from the filing of the comment or opposition and the judicial counter-affidavits by the party in whose favor the writ of attachment was issued (13a)

**SEC. 2.14. Proceedings where property claimed by third person. —** If the property attached is claimed by any person other than the party against whom attachment had been issued or his or her agent, and such person makes an affidavit of his or her title thereto, or right to the possession thereof, stating the grounds of such right or title, and serves such affidavit upon the sheriff while the latter has possession of the attached property, and a copy thereof upon the attaching party, the sheriff shall not be bound to keep the property under attachment, unless the attaching party or his or her agent, on demand of the sheriff, shall file a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied upon. In case of disagreement as to such value, the same shall be decided by the court issuing the writ of attachment. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The sheriff shall not be liable for damages for the taking or keeping of such property to any such third-party claimant if such bond shall be filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his or her claim to the property, or prevent the attaching party from claiming damages against a third-party claimant who filed a frivolous or plainly spurious claim, in the same or a separate action.

When the writ of attachment is issued in favor of the Republic of the Philippines, or any officer duly representing it, the filing of such bond shall

not be required, and in case the sheriff is sued for damages as a result of the attachment, he or she or she shall be represented by the Solicitor General, and if held liable therefor, the actual damages judged by the court shall be paid by the National Treasurer out of the funds to be appropriated for the purpose. (14)

**SEC. 2.15. *Satisfaction of judgment out of property attached; return of sheriff.*** — If judgment be recovered by the attaching party and execution issues thereon, the sheriff may cause the judgment to be satisfied out of the property attached, if it be sufficient for that purpose in the following manner:

- (a) By paying to the judgment obligee the proceeds of all sales of perishable or other property sold in pursuance of the order of the court, or so much as shall be necessary to satisfy the judgment;
- (b) If any balance remains due, by selling so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in the sheriff's hands, or in those of the clerk of the court;
- (c) By collecting from all persons having in their possession credits belonging to the judgment obligor, or owing debts to the latter at the time of the attachment of such credits or debts, the amount of such credits and debts as determined by the court in the action, and stated in the judgment, and paying the proceeds of such collection over to the judgment obligee.

The sheriff shall forthwith make a return in writing to the court of his or her proceedings under this section and furnish the parties with copies thereof. (15)

**SEC. 2.16. *Balance due collected upon an execution; excess delivered to judgment obligor.*** — If after realizing upon all the property attached, including the proceeds of any debts or credits collected, and applying the proceeds to the satisfaction of the judgment, less the expenses of proceedings upon the judgment, any balance shall remain due, the sheriff shall proceed to collect such balance as upon ordinary execution. Whenever the judgment is paid, upon reasonable demand, the sheriff shall return to the judgment obligor the attached property remaining in his or her hands, and any proceeds of the sale of the property attached not applied to the judgment. (16)

**SEC. 2.17. *Recovery upon the counter-bond.*** — When the judgment has become executory, the surety or sureties on any counter-bond given pursuant to the provisions of this Rule to secure the payment of the judgment shall become charged on such counter-bond and bound to pay the judgment obligee upon demand the amount due under the judgment, which amount may be recovered from such surety or sureties after notice and summary hearing in the same action. (17)

**SEC. 2.18. *Disposition of money deposited.*** — Where the party against whom attachment had been issued has deposited money instead of giving counter-bond, it shall be applied under the direction of the court to the satisfaction of any judgment rendered in favor of the attaching party, and after satisfying the judgment the balance shall be refunded to the depositor or his or her assignee. If the judgment is rendered in favor of the party against whom attachment was issued, the whole sum deposited must be refunded to him or her or his or her assignee. (18)

**SEC. 2.19. *Disposition of attached property where judgment is for party against whom attachment was issued.*** — If judgment be rendered against the attaching party, all the proceeds of sales and money collected or received by the sheriff, under the order of attachment, and all property attached remaining in any such officer's hands, shall be delivered to the party against whom attachment was issued, and the order of attachment discharged. (19)

**SEC. 2.20. *Claim for damages on account of improper, irregular or excessive attachment.*** — An application for damages on account of improper, irregular or excessive attachment must be filed before the trial or before an appeal is perfected or before the judgment becomes executory, with due notice to the attaching party and his or her surety or sureties, setting forth the facts showing his or her right to damages and the amount thereof. Such damages may be awarded only after proper hearing and shall be included in the judgment on the main case.

If the judgment of the appellate court is favorable to the party against whom the attachment was issued, he or she or she must claim damages sustained during the pendency of the appeal by filing an application in the appellate court, with notice to the party in whose favor the attachment was issued or his or her surety or sureties, before the judgment of the appellate court becomes executory. The appellate court may allow the application to be heard and decided by the trial court.

Nothing herein contained shall prevent the party against whom the

attachment was issued from recovering, in the same action, the damages awarded to him or her from any property of the attaching party not exempt from execution should the bond or deposit given by the latter be insufficient or fail to fully satisfy the award. (20)

## Rule 3

### PRELIMINARY INJUNCTION (R58)

**SECTION 3.1.** *Preliminary injunction defined; classes.* — A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction. (1)

**SEC. 3.2.** *Who may grant preliminary injunction.* — A preliminary injunction may be granted by the court where the action or proceeding is pending. If the action or proceeding is pending in the Court of Appeals or in the Supreme Court, it may be issued by said court or any member thereof. (2)

**SEC. 3.3.** *Matters of extreme urgency.* — If the matter is of extreme urgency and the applicant will suffer grave injustice and/or irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue *ex parte* a twenty (20)-day temporary restraining order. The issuing judge shall, within twenty-four (24) hours from the filing of the application, serve a copy of the temporary restraining order simultaneous with: a) the service of summons, b) the copy of the complaint or initiatory pleading, c) the supporting judicial affidavits, and d) the notice of the schedule of raffle pursuant to Section 1.3 of this Title. Thereafter, the assigned court shall proceed to hear the application for the provisional remedy sought for. The application for the provisional remedy shall be resolved by the court within the twenty (20)-day effectiveness period of the temporary restraining order. (n)

**SEC. 3.4.** *Grounds for issuance of preliminary injunction.* — A preliminary injunction may be granted when it is established that:

- (a) The applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the

commission or continuation of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

- (b) The commission, continuation or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
- (c) A party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual. (3)

**SEC. 3.5. Verified application and bond for preliminary injunction or temporary restraining order.** — A preliminary injunction or temporary restraining order may be granted only when:

- (a) The verified application in the action or proceeding, **together with the supporting judicial affidavits**, shows facts entitling the applicant to the relief demanded;
- (b) Unless exempted by the court, the applicant files with the court where the action or proceeding is pending, a bond executed in favor of the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay to such party or person all damages which he or she or she may sustain by reason of the injunction should the court finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued;
- (c) When an application for a writ of preliminary injunction or a temporary provisional order is included in a complaint or any initiatory pleading, the case, if filed in a multiple-sala court, shall be raffled only after notice to and in the presence of the adverse party or the person to be enjoined. However, if the party is duly notified and fails to appear, the raffle should proceed. In any event, such notice shall be preceded, or contemporaneously accompanied, by service of summons, together with a

copy of the complaint or initiatory pleading and the applicant's supporting judicial affidavit, upon the adverse party in the Philippines.

However, where the summons and other required papers could not be served personally or by substituted service despite diligent efforts, or the adverse party is a resident of the Philippines temporarily absent therefrom, or is a nonresident thereof, the requirement of prior or contemporaneous service of summons shall not apply; and

- (d) The application for a temporary provisional order shall thereafter be acted upon only after all parties are heard in a summary hearing which shall be conducted within twenty-four (24) hours after the sheriff's return of service and/or the records are received by the branch selected by raffle, and to which the records shall be transmitted immediately. (4)

**SEC. 3.6. *Temporary restraining order issued by appellate courts.***

— A temporary restraining order issued by the Court of Appeals or a member thereof shall be effective for sixty (60) days from service on the party or person sought to be enjoined. A temporary restraining order issued by the Supreme Court or a member thereof shall be effective until further orders. (n)

**SEC. 3.7. *Period to decide main case or petition after grant of writ.***

— The trial court and the Court of Appeals that issued a writ of preliminary injunction against a lower court, board, officer, or quasi-judicial agency shall decide the main case or petition within six (6) months from the issuance of the writ. (n)

**SEC. 3.8. *Grounds for objection to, or for motion of dissolution of, injunction or temporary restraining order.*** — The application for injunction or restraining order may be:

- a) denied upon a showing of its insufficiency;
- b) denied, or, if **previously** granted, dissolved on other grounds **based upon the judicial affidavits** of the party or person enjoined, which may be opposed by the applicant also by **judicial affidavits**;
- c) denied, or, if **previously** granted, dissolved if it appears, after hearing, that although the applicant is entitled to the injunction or restraining

order, the issuance or continuance thereof, as the case may be, would cause irreparable damage to the party or person enjoined, while the applicant can be fully compensated for such damages as he or she or she may suffer, and the former **posts** a bond in an amount fixed by the court **upon the condition** that he or she or she will pay all damages which the applicant may suffer by reason of the denial or the dissolution of the injunction or temporary provisional order; or

d) modified if it appears that the extent of the preliminary injunction or temporary restraining order granted is too great. (6a)

**SEC. 3.9. *Prohibition on the issuance of injunctive relief in cases involving government infrastructure projects.*** — No court, except the Supreme Court, shall issue any temporary provisional order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private, acting under the government's direction, to restrain, prohibit or compel the following acts relating to government infrastructure projects:

- (a) acquisition, clearance and development of the right-of-way and/or site or location of any national government project;
- (b) bidding or awarding of contract/project of the national government;
- (c) commencement, prosecution, execution, implementation, or operation of any such contract or project;
- (d) termination or rescission of any such contract/project; and
- (e) the undertaking or authorization of any other lawful activity necessary for such contract/project.

This prohibition shall apply in all cases, disputes or controversies instituted by a private party, including but not limited to cases filed by bidders or those claiming to have rights through such bidders involving such contract or project. This prohibition shall not apply when the matter is of extreme urgency involving constitutional issues, such that unless a temporary provisional order is issued, grave injustice and irreparable injury will arise. The applicant shall file a bond in an amount to be fixed by the court, which bond shall accrue in favor of the

government if the court should finally decide that the applicant was not entitled to the relief sought.

Any temporary provisional order, preliminary injunction or preliminary mandatory injunction issued in violation of this section is void and of no force and effect. (n)

**SEC. 3.10. *Prohibition on the issuance of temporary provisional orders and preliminary injunctions against extrajudicial foreclosure.*** — No temporary provisional order or writ of preliminary injunction against the extrajudicial foreclosure of real estate mortgage shall be issued on the following grounds:

- (a) the loan secured by the mortgage has been paid or is not delinquent, unless the application is verified and supported by evidence of payment; or
- (b) the interest on the loan is unconscionable, unless the debtor pays the mortgagee at least twelve percent per annum interest on the principal obligation as stated in the application for foreclosure sale, which shall be updated monthly while the case is pending. (n)

**SEC. 3.11. *Service of copies of bonds; effect of disapproval of the same.*** — The party filing a bond in accordance with the provisions of this Rule shall forthwith serve a copy of such bond on the other party, who may object to the sufficiency of the bond, or of the surety or sureties thereon. If the applicant's bond is found to be insufficient in amount, or if the surety or sureties thereon fail to justify, and a bond sufficient in amount with sufficient sureties approved after justification is not filed forthwith, the writ of preliminary injunction shall be dissolved. If the bond of the adverse party is found to be insufficient in amount, or the surety or sureties thereon fail to justify the same, or a bond sufficient in amount with sufficient sureties approved after justification is not filed forthwith, the writ of preliminary injunction shall be granted or restored, as the case may be. (7)

**SEC. 3.12. *Judgment to include damages against party and sureties.*** — At the trial, the amount of damages to be awarded to either party, upon the bond of the adverse party, shall be claimed, ascertained, and awarded under the same procedure prescribed in Section 2.20 of Title V. (8)

**SEC. 3.13. *When final injunction granted.*** — If after the trial of the action it appears that the applicant is entitled to have the act or acts complained of permanently enjoined, the court shall grant a final injunction

perpetually restraining the party or person enjoined from the commission or continuance of the act or acts, or confirming the preliminary mandatory injunction. (9)

## Rule 4

### RECEIVERSHIP (R59)

**SECTION 4.1. Appointment of receiver.** — One or more receivers of the property subject of the action or proceeding may be appointed by the court where the action is pending, or by the Court of Appeals or by the Supreme Court, or a member thereof, in the following cases:

- (a) when it appears from the verified application, **the supporting judicial affidavits**, and such other proof as the court may require, that the party applying for the appointment of a receiver has an interest in the property or fund which is the subject of the action or proceeding, and that such property or fund is in danger of being lost, removed, or materially injured unless a receiver be appointed to administer and preserve it;
- (b) when, in an action by the mortgagee for the foreclosure of a mortgage, it appears that the property is in danger of being wasted or dissipated or materially injured, and that its value is probably insufficient to discharge the mortgage debt, or that the parties have so stipulated in the contract of mortgage;
- (c) after judgment, to preserve the property during the pendency of an appeal, or to dispose of it according to the judgment, or to aid execution when the execution has been returned unsatisfied, or the judgment obligor refuses to apply his or her property in satisfaction of the judgment, or otherwise, to carry the judgment into effect; or
- (d) whenever in other cases, it appears that the appointment of a receiver is the most convenient and feasible means of preserving, administering, or disposing the property in litigation.

During the pendency of an appeal, the appellate court may allow an application for the appointment of a receiver to be filed in and decided by the court of origin. The appointed receiver shall be subject to the control of said court. **Even after entry of judgment, the trial court may also allow and grant an application for the appointment of a receiver. (1a)**

**SEC. 4.2. Bond on appointment of receiver.** — **After** issuing the order appointing a receiver, the court shall require the applicant to file a bond executed in favor of the party against whom the application is presented, in an amount to be fixed by the court, to the effect that the applicant will pay such party all damages he or she or she may sustain by reason of the appointment of such receiver in case the applicant shall have procured such appointment without sufficient cause; and the court may, in its discretion, at any time after the appointment, require an additional bond as further security for such damages. (2a)

**SEC. 4.3. Denial of application or discharge of receiver.** — The application may be denied, or **the appointed** receiver may be discharged, when the adverse party files a bond executed in favor of the applicant, in an amount to be fixed by the court, to the effect that such party will pay the applicant all damages he or she or she may suffer by reason of the acts, omissions, or other matters specified in the application as ground for such appointment. The receiver previously appointed may also be discharged if it is shown that his or her appointment was obtained without sufficient cause. (3a)

**SEC. 4.4. Oath and bond of receiver.** — **After appointment by the court, but** before entering upon his or her duties, the receiver shall be sworn to perform them faithfully, and shall file a bond, executed to such person and in such sum as the court may direct, to the effect that he or she or she will faithfully discharge his or her duties in the action or proceeding and obey the orders of the court. (4a)

**SEC. 4.5. Service of copies of bonds; effect of disapproval of same.** — The person filing a bond in accordance with the provisions of this Rule shall forthwith serve a copy thereof on each interested party, who may object to its sufficiency or of the surety or sureties thereon. If either the applicant's or the receiver's bond is found to be insufficient in amount, or if the surety or sureties thereon fail to justify, and a bond sufficient in amount with sufficient sureties approved after justification is not filed forthwith, the application shall be denied or the receiver discharged, as the case may be. If the bond of the adverse party is found to be insufficient in amount or the

surety or sureties thereon fail to justify, and a bond sufficient in amount with sufficient sureties approved after justification is not filed forthwith, the receiver shall be appointed or re-appointed, as the case may be. (5)

**SEC. 4.6. *General powers of receiver.*** — Subject to the control of the court in which the action or proceeding is pending, a receiver shall have the power to bring and defend, in such capacity, actions in his or her own name; to take and keep possession of the property in controversy; to receive rents; to collect debts due to himself as receiver or to the fund, property, estate, person, or corporation of which he or she or she is the receiver; to compound for and compromise the same; to make transfers; to pay outstanding debts; to divide the money and other property that shall remain among the persons legally entitled to receive the same; and generally to do such acts respecting the property as the court may authorize. However, funds in the hands of a receiver may be invested only by order of the court upon the written consent of all the parties to the action.

No action may be filed by or against a receiver without leave of the court which appointed him. (6)

**SEC. 4.7. *Liability for refusal or neglect to deliver property to receiver.*** — A person who refuses or neglects, upon reasonable demand, to deliver to the receiver all the property, money, books, deeds, notes, bills, documents and papers within his or her power or control, subject of or involved in the action or proceeding, or in case of disagreement, as determined and ordered by the court, may be punished for contempt and shall be liable to the receiver for the money or the value of the property and other things so refused or neglected to be surrendered, together with all damages that may have been sustained by the party or parties entitled thereto as a consequence of such refusal or neglect. (7)

**SEC. 4.8. *Termination of receivership; compensation of receiver.*** — Whenever the court, *motu proprio* or on motion of either party, shall determine that the necessity for a receiver no longer exists, it shall **issue an order requiring interested parties to submit their comments within fifteen (15) days from receipt of the order. Within thirty (30) days after the submission of the comments or expiration of the period to file the same, the court shall settle the accounts of the receiver**, direct the delivery of the funds and other property in his or her possession to the person adjudged to be entitled to receive them, and order the discharge of the receiver from further duty as such. The court shall allow the receiver such reasonable compensation as the circumstances of the case warrant, to

be taxed as costs against the defeated party, or apportioned, as justice requires. (8a)

**SEC. 4.9. *Judgment to include recovery against sureties.*** — The amount, if any, to be awarded to any party upon any bond filed in accordance with the provisions of this Rule, shall be claimed, ascertained, and granted under the same procedure prescribed in Section **2.20 of this Title.** (9a)

## Rule 5

### REPLEVIN (R60)

**SECTION 5.1. *Application.*** — A party praying for the recovery of possession of personal property may apply for an order for the delivery of such property to him, in the manner hereinafter provided. (1a)

**SEC. 5.2. *Judicial affidavit and bond.*** — The applicant must show by his or her own **judicial** affidavit or that of some other person who personally know the following facts:

- (a) That the applicant is the owner of the property claimed, particularly describing it, or is entitled to the possession thereof;
- (b) That the property is wrongfully detained by the adverse party, alleging the cause of detention thereof according to the best of his or her knowledge and information;
- (c) That the property has not been distrained or taken for a tax assessment or a fine pursuant to law, or seized under a writ of execution or preliminary attachment, or otherwise placed under *custodia legis*;
- (e) The actual market value of the property; and
- (d) **If the property is seized by the police or any authority, that it is exempt from such seizure or custody, or is the subject of a pending case for reckless imprudence or some other offense where it may be released subject to the submission of pictures and an affidavit of undertaking to produce the same whenever needed in the course of the proceedings;** and

The applicant must also **post** a bond, executed in favor of the adverse party in an amount double the value of the property as stated in the affidavit aforementioned, for the return of the property to the adverse party if such return be adjudged, and for the payment to the adverse party of such sum as he or she or she may recover from the applicant in the action. (2a)

**SEC. 5.3. Order.** — Upon the filing of the application and the bond, the court shall issue an order and a writ of replevin describing the personal property alleged to be wrongfully detained, and requiring the sheriff to immediately take such property into his or her custody. (3a)

**SEC. 5.4. Duty of the sheriff.** — Upon receiving such order, the sheriff must immediately serve a copy thereof on the adverse party, together with a copy of the application, the supporting judicial affidavits and bond, and must **immediately and without delay** take the property, if it be in the possession of the adverse party, or his or her agent, and retain it in his or her custody. If the property or any part thereof be concealed in a building or enclosure, the sheriff must demand its delivery, and if it be not delivered, he or she or she must cause the building or enclosure to be broken open and take the property into his or her possession.

After the sheriff has taken possession of the property as herein provided, he or she or she must keep it in a secure place and shall be responsible for its immediate delivery to the party entitled thereto upon receiving his or her fees and necessary expenses for taking and keeping the same. (4a)

**SEC. 5.5. Return of property.** — If the adverse party objects to the sufficiency of the applicant's bond, or of the surety or sureties thereon, he or she or she cannot immediately require the return of the property; but if he or she or she does not so object, he or she or she may, at any time before the delivery of the property to the applicant, require the return thereof, by filing with the court where the action is pending a bond executed in favor of the applicant, in double the value of the property as stated in the judicial affidavit of the applicant or his or her witnesses for the delivery thereof to the applicant, if such delivery be adjudged, and for the payment of such sum to him or her as may be recovered against the adverse party, and by serving a copy of such bond on the applicant. (5)

**SEC. 5.6. Disposition of property by sheriff.** — If within five (5) days after the taking of the property by the sheriff, the adverse party does not object to the sufficiency of the bond, or of the surety or sureties thereon, or if the adverse party so objects and the court affirms its approval of the

applicant's bond or approves a new bond, or if the adverse party requires the return of the property but his or her bond is objected to and found insufficient and he or she or she does not forthwith file an approved bond, the property shall be delivered to the applicant. If, for any reason, the property is not delivered to the applicant, the sheriff must return it to the adverse party. (6)

**SEC. 5.7. Proceedings where property claimed by third person.** — If the property taken is claimed by any person other than the party against whom the writ of replevin had been issued or his or her agent, and such person makes a judicial affidavit of his or her title thereto, or right to the possession thereof, stating the grounds therefor, and serves such judicial affidavit upon the sheriff while the latter has possession of the property and a copy thereof upon the applicant, the sheriff shall not be bound to keep the property under replevin or deliver it to the applicant unless the applicant or his or her agent, on demand of said sheriff, shall file a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property under replevin as provided in Section hereof. In case of disagreement as to such value, the court shall determine the same. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The sheriff shall not be liable for damages, for the taking or keeping of such property, to any such third-party claimant if such bond shall be filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his or her claim to the property, or prevent the applicant from claiming damages against a third-party claimant who filed a frivolous or plainly spurious claim, in the same or a separate action.

When the writ of replevin is issued in favor of the Republic of the Philippines, or any officer duly representing it, the filing of such bond shall not be required. In case the sheriff is sued for damages as a result of the replevin, he or she or she shall be represented by the Solicitor General, and if held liable therefor, the actual damages adjudged by the court shall be paid by the National Treasurer out of the funds to be appropriated for the purpose. (7)

**SEC. 5.8. Return of papers.** — The sheriff must file the order, with his or her proceedings indorsed thereon, with the court which issued the writ of replevin within **fifteen (15)** days after taking the property mentioned therein. (8a)

**SEC. 5.9. *Judgment.*** — After trial of the issues, the court shall determine who has the right of possession to and the value of the property, and shall render judgment, in the alternative, for the delivery thereof to the party entitled to the same or for its value in case delivery cannot be made, and also for such damages as either party may prove, with costs. (9)

**SEC. 5.10. *Judgment to include recovery against sureties.*** — The amount, if any, to be awarded to a party upon any bond filed in accordance with the provisions of this Rule, shall be claimed, ascertained, and granted under the same procedure as prescribed in Section **2.20 of this Title.** (10a)

## Rule 6

### SUPPORT PENDENTE LITE (R61)

**SECTION 6.1. *Application.*** — A verified application for support *pendente lite* may be filed by any party stating the grounds for the claim and the financial conditions of both parties, and accompanied by judicial affidavits of the applicant and the witnesses, depositions or other authentic documents in support thereof. (1a)

**SEC. 6.2. *Order.*** — **After compliance with Section 1.4 of this Title,** the court shall determine provisionally the pertinent facts, and shall render such orders as justice and equity may require, having due regard to the probable outcome of the case and such other circumstances as may aid in the proper resolution of the question involved. If the application is granted, the court shall fix the amount of money to be provisionally paid or such other forms of support as should be provided, taking into account the necessities of the applicant and the resources or means of the adverse party, and the terms of payment or mode for providing the support. If the application is denied, the principal case shall be tried and decided **within six (6) months from the date of its filing.** (4a)

**SEC. 6.3. *Enforcement of order.*** — If the adverse party fails to comply with an order granting support *pendente lite*, the court shall, *motu proprio* or upon motion, issue an order of execution against him, without prejudice to his or her liability for contempt.

When the person ordered to give support *pendente lite* refuses or fails to do so, any third person who furnished that support to the applicant may, after due motion in the same case, obtain a writ of execution to enforce his

or her right of reimbursement against the person ordered to provide such support. (5)

**SEC. 6.4. *Support in criminal cases.*** — In criminal actions where the civil liability includes support for the offspring as a consequence of the crime, and the civil aspect thereof has not been waived, reserved or instituted prior to its filing, the accused may be ordered to provide support *pendente lite* to the child born to the offended party allegedly because of the crime. The application therefor may be filed successively by the offended party, her parents, grandparents or guardian and the State in the corresponding criminal case during its pendency, in accordance with the procedure established under this Rule. (6)

**SEC. 6.5. *Restitution.*** — When the judgment or final order of the court finds that the person who has been providing support *pendente lite* is not liable therefor, it shall order the recipient thereof to return to the former the amounts already paid with legal interest from the dates of actual payment, without prejudice to the right of the recipient to obtain reimbursement in a separate action from the person legally obliged to give the support. Should the recipient fail to reimburse said amounts, the person who provided the same may likewise seek reimbursement thereof in a separate action from the person legally obliged to give such support. (7)

## TITLE VIII: JUDGMENTS AND EXECUTION

### Rule 1

#### JUDGMENTS, FINAL ORDERS AND ENTRY THEREOF (R36)

**SECTION 1.1.** *Rendition of judgments and final orders.* — A judgment or final order determining the merits of the case shall be in writing, stating clearly and distinctly the facts and the law on which it is based, signed by **the judge**, and filed with the clerk of the court. (1a)

**SEC. 1.2.** *Entry of judgments and final orders.* — If no appeal or motion for new trial or reconsideration is filed within the period to appeal, or the appeal has been finally resolved, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. The date of finality of the judgment or final order shall be deemed to be the date of its entry. The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, with a certificate that such judgment or final order has become final and executory. (2)

**SEC. 1.3.** *Judgment for or against one or more of several parties.* — Judgment may be given for or against one or more several **petitioners**, and for or against one or more of several **respondents**. When justice so demands, the court may require the parties on each side to file adversary pleadings as between themselves and determine their ultimate rights and obligations. (3)

**SEC. 1.4.** *Separate judgments.* — When more than one claim for relief is presented in an action, the court, at any stage, upon a determination of the issues material to a particular claim and all counterclaims arising out of the transaction or occurrence which is the subject matter of the claim, may render a separate judgment disposing of such claim. The judgment shall terminate the action with respect to the claim so disposed of and the action shall proceed as to the remaining claims. In case a separate judgment is rendered, the court by order may stay its enforcement until the rendition of a subsequent judgment or judgments and may prescribe such conditions as may be necessary to secure the benefit thereof to the party in whose favor the judgment is rendered. (5)

**SEC. 1.5. Judgment against entity without juridical personality.** — When judgment is rendered against two or more persons sued as an entity without juridical personality, the judgment shall set out their individual or proper names, if known. (6)

## Rule 2

### NEW TRIAL OR RECONSIDERATION (R37)

**SECTION 2.1. Grounds of and period for filing motion for new trial or reconsideration.** — Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

- (a) **Extrinsic** fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has **clearly** been impaired in his or her rights; or
- (b) Newly discovered evidence, which he or she or she could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.

**Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence does not justify the decision or final order, or that the decision or final order is contrary to law.** (1a)

**SEC. 2.2. Contents of motion for new trial or reconsideration and notice thereof.** — The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.

A motion for new trial shall be proved in the manner provided for proof of motions.

A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in paragraph (a) of the preceding section shall be supported by affidavit of merits which may be

rebutted by affidavits. A motion for the cause mentioned in paragraph (b) shall be **likewise** supported by **duly executed judicial** affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.

A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.

**A *pro forma* motion for new trial or reconsideration shall not toll the reglementary period of appeal.** (2a)

**SEC. 2.3. Action upon motion for new trial or reconsideration.** — The trial court may set aside the judgment or final order and grant a new trial, upon such terms as may be just; or may deny the motion. If the court finds that excessive damages have been awarded or that the judgment or final order is contrary to the evidence or law, it may amend such judgment or final order accordingly. (3)

**SEC. 2.4. Resolution of motion.** — A motion for new trial or reconsideration shall be resolved within thirty (30) days from the time it is submitted for resolution. (4)

**SEC. 2.5. Second motion for new trial.** — A motion for new trial shall include all grounds then available and those not so included shall be deemed waived. A second motion for new trial, based on a ground not existing nor available when the first motion was made, may be filed within the time herein provided excluding the time during which the first motion had been pending.

**No party shall be allowed a second motion for reconsideration of a judgment or final order.** (5)

**SEC. 2.6. Effect of granting of motion for new trial.** — If a new trial is granted in accordance with the provisions of this Rule, the original judgment or final order shall be vacated, and the action shall stand for trial *de novo*; but the recorded evidence taken upon the former trial, insofar as the same is material and competent to establish the issues, shall be used at the new trial without retaking the same. (6)

**SEC. 2.7. Partial new trial or reconsideration.** — If the grounds for a motion under this Rule appear to the court to affect the issues as to only a part, or less than all of the matter in controversy, or only one, or less than all, of the parties to it, the court may order a new trial or grant reconsideration as to such issues if severable without interfering with the judgment or final order upon the rest. (7)

**SEC. 2.8. Effect of order for partial new trial.** — When less than all of the issues are ordered retried, the court may either enter a judgment or final order as to the rest, or stay the enforcement of such judgment or final order until after the new trial. (8)

**SEC. 2.9. Remedy against order denying a motion for new trial or reconsideration.** — An order denying a motion for new trial or reconsideration is not appealable, the remedy being an appeal from the judgment or final order. (9)

### Rule 3

#### RELIEF FROM JUDGMENTS, ORDERS, OR OTHER PROCEEDINGS (R38)

**SECTION 3.1. Petition for relief from judgment, order, or other proceedings.** — When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in **the Municipal Trial Courts or Regional Trial Courts** through **extrinsic** fraud, accident, mistake, or excusable negligence, he or she may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside. (1a)

**SEC. 3.2. Petition for relief from denial of appeal.** — When a judgment or final order is rendered by any court in a case, and a party thereto, by fraud, accident, mistake, or excusable negligence, has been prevented from taking an appeal, he or she may file a petition in such court and in the same case praying that the appeal be given due course.

**SEC. 3.3. Time for filing petition; contents and verification.** — A petition provided for in either of the preceding sections of this Rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered, or such

proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be. (3)

**SEC. 3.4. *Order to file an answer.*** — If the petition is sufficient in form and substance to justify relief, the court in which it is filed, shall issue an order requiring the adverse parties to answer the same within fifteen (15) days from the receipt thereof. The order shall be served in such manner as the court may direct, together with copies of the petition and the accompanying affidavits. (4)

**SEC. 3.5. *Preliminary injunction pending proceedings.*** — The court in which the petition is filed, may grant such preliminary injunction as may be necessary for the preservation of the rights of the parties, upon the filing by the petitioner of a bond in favor of the adverse party, conditioned that if the petition is dismissed or the petitioner fails on the trial of the case upon its merits, he or she will pay the adverse party all damages and costs that may be awarded to him or her by reason of the issuance of such injunction or the other proceedings following the petition; but such injunction shall not operate to discharge or extinguish any lien which the adverse party may have acquired upon the property of the petitioner. (5)

**SEC. 3.6. *Proceedings after answer is filed.*** — After the filing of the answer or the expiration of the period therefor, the court shall hear the petition and if after such hearing, it finds that the allegations thereof are not true, the petition shall be dismissed; but if it finds said allegations to be true, it shall set aside the judgment or final order or other proceeding complained of upon such terms as may be just. Thereafter the case shall stand as if such judgment, final order or other proceeding had never been rendered, issued or taken. The court shall then proceed to hear and determine the case as if a timely motion for a new trial or reconsideration had been granted by it. (6)

**SEC. 3.7. *Procedure where the denial of an appeal is set aside.*** — Where the denial of an appeal is set aside, the lower court shall be required to give due course to the appeal and to elevate the record of the appealed case as if a timely and proper appeal had been made. (7)

**RULE 4****EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS**

**SECTION 4.1. *Execution upon judgment or final order as a matter of right.*** — Execution upon a judgment or order that disposes of the action or proceeding shall issue as a matter of right, on motion, upon entry of judgment.

**The judgment obligee (or the prevailing party in the court of origin) shall file the motion for execution in the court which rendered the final judgment or order submitting therewith a certified true copy of the judgments or final orders sought to be enforced and of the entry thereof, with notice to the adverse party. [1(b)a]**

**Upon the motion of the prevailing party, the court may appoint a notary public or any counsel to be known as a special sheriff who shall post a sheriff's bond in an amount to be determined by the court to answer for any damages suffered by any injured party. The special sheriff shall exercise the same duties and responsibilities and exercise the same powers as a regular sheriff. (n)**

**The appellate court may, on motion in the same case, when the interest of justice so requires, direct the court of origin to issue the writ of execution. (1a)**

**SEC. 4.2. Discretionary execution. —**

(a) ***Execution of a judgment or final order pending appeal.*** — On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may only issue upon good

reasons to be stated in a special order after due hearing.

(b) *Execution of several, separate or partial judgments.* — A several, separate or partial judgment may be executed under the same terms and conditions as execution of a judgment or final order pending appeal. (2)

**SEC. 4.3. Stay of discretionary execution.** — Discretionary execution issued under the preceding section may be stayed upon approval by the proper court of a sufficient supersedeas bond filed by the party against whom it is directed, conditioned upon the performance of the judgment or order allowed to be executed in case it shall be finally sustained in whole or in part. The bond thus given may be proceeded against on motion with notice to the surety. (3)

**SEC. 4.4. Judgments not stayed by appeal.** — Judgments in actions for injunction, receivership, accounting and support, and such other judgments as are now or may hereafter be declared to be immediately executory, shall be enforceable after their rendition and shall not be stayed by an appeal taken therefrom, unless otherwise ordered by the trial court. On appeal therefrom, the appellate court in its discretion may make an order suspending, modifying, restoring or granting the injunction, receivership, accounting, or award of support.

**The stay of execution shall be upon such terms as to bond or otherwise as may be considered proper for the security or protection of the rights of the adverse party.** (4)

**SEC. 4.5. Effect of reversal of executed judgment.** — Where the executed judgment is reversed totally or partially, or annulled, on appeal or otherwise, the trial court may, on motion, issue such orders of restitution or reparation of damages as equity and justice may warrant under the circumstances. (5)

**SEC. 4.6. Execution by motion or by independent action.** — A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. **Such** revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations. (6a)

**SEC. 4.7. *Execution in case of death of party.* — In an action for recovery of money:**

- (a) **If levy on execution of the judgment had already been made at the time the judgment obligor died, the action will not be dismissed and shall proceed to execution sale;**
- (b) **If the judgment obligor died prior to the levy, the action will be dismissed, and the judgment may be filed as a claim in the estate settlement proceeding.**  
(7a)

**SEC. 4.8. *Issuance, form and contents of a writ of execution.* —** The writ of execution shall: (1) issue in the name of the Republic of the Philippines from the court which granted the motion; (2) state the name of the court, the case number and title, the dispositive part of the subject judgment or order; and (3) require the sheriff, **the special sheriff** or other proper officer to whom it is directed to enforce the writ according to its terms, in the manner hereinafter provided:

- (a) If the execution be against the property of the judgment obligor, to satisfy the judgment, with interest, out of the real or personal property of such judgment obligor;
- (b) If it be against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants, or trustees of the judgment obligor, to satisfy the judgment, with interest, out of such property;
- (c) If it be for the sale of real or personal property, to sell such property, describing it, and apply the proceeds in conformity with the judgment, the material parts of which shall be recited in the writ of execution;
- (d) If it be for the delivery of the possession of real or personal property, to deliver the possession of the same, describing it, to the party entitled thereto, and to satisfy any costs, damages, rents, or profits covered by the judgment out of the personal property of the person against whom it was rendered, and if sufficient personal property cannot be found, then out of the real property; and

- (e) In all cases, the writ of execution shall specifically state the amount of the interest, costs, damages, rents, or profits due as of the date of the issuance of the writ, aside from the principal obligation under the judgment. For this purpose, the motion for execution shall specify the amounts of the foregoing reliefs sought by the movant.

(8a)

**SEC. 4.9. Execution of judgments for money, how enforced. —**

- (a) *Immediate payment on demand.* — The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his or her authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.

If the judgment obligee or his or her authorized representative is not present to receive payment, the judgment obligor shall deliver the aforesaid payment to the executing sheriff. The latter shall turn over all the amounts coming into his or her possession within the same day to the clerk of court of the court that issued the writ, or if the same is not practicable, deposit said amounts to a fiduciary account in the nearest government depository bank of the Regional Trial Court of the locality.

The clerk of said court shall thereafter arrange for the remittance of the deposit to the account of the court that issued the writ whose clerk of court shall then deliver said payment to the judgment obligee in satisfaction of the judgment. The excess, if any, shall be delivered to the

judgment obligor while the lawful fees shall be retained by the clerk of court for disposition as provided by law. In no case shall the executing sheriff demand that any payment by check be made payable to him.

(b) *Satisfaction by levy.* — If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he or she must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees.

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied upon in like manner and with like effect as under a writ of attachment.

(c) *Garnishment of debts and credits.* — The officer may levy on debts due the judgment obligor and other credits, including bank deposits, financial interests, royalties, commissions and other personal property not capable of manual delivery in the possession or control of third parties. Levy shall be made by serving notice upon the person owing such debts or having in his or her

possession or control such credits to which the judgment obligor is entitled. The garnishment shall cover only such amount as will satisfy the judgment and all lawful fees.

The garnishee shall make a written report to the court within five (5) days from service of the notice of garnishment stating whether or not the judgment obligor has sufficient funds or credits to satisfy the amount of the judgment. If not, the report shall state how much funds or credits the garnishee holds for the judgment obligor. The garnished amount in cash, or certified bank check issued in the name of the judgment obligee, shall be delivered directly to the judgment obligee within ten (10) working days from service of notice on said garnishee requiring such delivery, except the lawful fees which shall be paid directly to the court.

In the event there are two or more garnishees holding deposits or credits sufficient to satisfy the judgment, the judgment obligor, if available, shall have the right to indicate the garnishee or garnishees who shall be required to deliver the amount due; otherwise, the choice shall be made by the judgment obligee.

**The executing sheriff shall observe the same procedure under paragraph (a) with respect to delivery of payment to the judgment obligee. (9)**

**SEC. 4.10. Execution of judgments for specific act. —**

- (a) *Conveyance, delivery of deeds, or other specific acts; vesting title.* — If a judgment directs a party to execute a conveyance of land or personal property, or to deliver deeds or other documents, or to perform any other specific act in connection therewith, and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done shall have like effect as if done by the party. If real or personal property is situated within the Philippines, the court in lieu of directing a conveyance thereof may by an order divest the title of any party and

vest it in others, which shall have the force and effect of a conveyance executed in due form of law.

- (b) *Sale of real or personal property.* — If the judgment be for the sale of real or personal property, to sell such property, describing it, and apply the proceeds in conformity with the judgment.
- (c) *Delivery or restitution of real property.* — The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him or her to peaceably vacate the property within three (3) working days, and restore possession thereof to the judgment obligee; otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money.
- (d) *Removal of improvements on property subject of execution.* — When the property subject of the execution contains improvements constructed or planted by the judgment obligor or his or her agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.
- (e) *Delivery of personal property.* — In judgments for the delivery of personal property, the officer shall take possession of the same and forthwith deliver it to the party entitled thereto and satisfy any judgment for money as therein provided. (10)

**SEC. 4.11. *Execution of special judgments.*** — When a judgment requires the performance of any act other than those mentioned in the two preceding sections, a certified copy of the judgment shall be attached to the

writ of execution and shall be served by the officer upon the party against whom the same is rendered, or upon any other person required thereby, or by law, to obey the same, and such party or person may be punished for contempt if he or she disobeys such judgment. (11)

**SEC. 4.12. *Effect of levy on execution as to third persons.*** — The levy on execution shall create a lien in favor of the judgment obligee over the right, title and interest of the judgment obligor in such property at the time of the levy, subject to liens and encumbrances then existing. (12)

**SEC. 4.13. *Property exempt from execution.*** — Except as otherwise expressly provided by law, the following property, and no other, shall be exempt from execution:

- (a) The judgment obligor's family home as provided by law, or the homestead in which he or she resides, and land necessarily used in connection therewith;
- (b) Ordinary tools and implements personally used by him or her in his or her trade, employment, or livelihood;
- (c) Three horses, or three cows, or three carabaos, or other beasts of burden, such as the judgment obligor may select necessarily used by him or her in his or her ordinary occupation;
- (d) His necessary clothing and articles for ordinary personal use, excluding jewelry;
- (e) Household furniture and utensils necessary for housekeeping, and used for that purpose by the judgment obligor and his or her family, such as the judgment obligor may select, of a value not exceeding one hundred thousand pesos;
- (f) Provisions for individual or family use sufficient for four months;
- (g) The professional libraries and equipment of judges, counsels, physicians, pharmacists, dentists, engineers, surveyors, clergymen, teachers, and other professionals, not exceeding three hundred thousand pesos in value;
- (h) One fishing boat and accessories not exceeding the total

value of one hundred thousand pesos owned by a fisherman and by the lawful use of which he or she earns his or her livelihood;

- (i) So much of the salaries, wages, or earnings of the judgment obligor for his or her personal services within the four months preceding the levy as are necessary for the support of his or her family;
- (j) Lettered gravestones;
- (k) Monies, benefits, privileges, or annuities accruing or in any manner growing out of any life insurance;
- (l) The right to receive legal support, or money or property obtained as such support, or any pension or gratuity from the Government;
- (m) Properties specially exempted by law.

But no article or species of property mentioned in this section shall be exempt from execution issued upon a judgment recovered for its price or upon a judgment of foreclosure of a mortgage thereon. (13)

**SEC. 4.14. *Return of writ of execution.*** — The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his or her receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectiveness expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties. (14)

**SEC. 4.15. *Notice of sale of property on execution.*** — Before the sale of property on execution, notice thereof must be given as follows:

- (a) In case of perishable property, by posting written notice of the time and place of the sale in three (3) public places, preferably in conspicuous areas of the municipal or city hall, post office and public market in the

municipality or city where the sale is to take place, for such time as may be reasonable, considering the character and condition of the property;

- (b) In case of other personal property, by posting a similar notice in the three (3) public places abovementioned for not less than five (5) days;
- (c) In case of real property, by posting for twenty (20) days in the three (3) public places abovementioned **and on the property itself**, a similar notice particularly describing the property and stating where the property is to be sold, and if the assessed value of the property exceeds fifty thousand (₱ 50,000.00) pesos, by publishing a copy of the notice once a week for two (2) consecutive weeks in one newspaper selected by raffle, whether in English, Filipino, or any major regional language published, edited and circulated or, in the absence thereof, having general circulation in the province or city;
- (d) In all cases, written notice of the sale shall be given to the judgment obligor, at least three (3) days before the sale, except as provided in paragraph (a) hereof where notice shall be given at any time before the sale, in the same manner as personal service of pleadings and other papers as provided by Section 6 of Title IV, Rule 14.

**The notice shall specify the place, date and exact time of the sale which should not be earlier than nine o'clock in the morning and not later than two o'clock in the afternoon. The place of the sale may be agreed upon by the parties. In the absence of such agreement, the sale of real property or personal property not capable of manual delivery shall be held in the office of the clerk of court of the Regional Trial Court or the Municipal Trial Court which issued the writ or which was designated by the appellate court. In the case of personal property capable of manual delivery, the sale shall be held in the place where the property is located. (15a)**

**SEC. 4.16. Proceedings where property claimed by third person.** — If the property levied on is claimed by any person other than the judgment obligor or his or her agent, and such person makes an affidavit of his or her title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a

copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his or her claim to the property in a separate action, or prevent the judgment obligee from claiming damages in the same or a separate action against a third-party claimant who filed a frivolous or plainly spurious claim.

**When the writ of execution is issued in favor of the Republic of the Philippines, or any officer duly representing it, the filing of such bond shall not be required, and in case the sheriff or levying officer is sued for damages as a result of the levy, he or she shall be represented by the Solicitor General and if held liable therefor, the actual damages adjudged by the court shall be paid by the National Treasurer out of such funds as may be appropriated for the purpose. (16)**

**SEC. 4.17. Penalty for selling without notice, or removing or defacing notice.** — An officer selling without the notice prescribed by Section 5 of this Rule shall be liable to pay punitive damages in the amount of five thousand (₱ 5,000.00) pesos to any person injured thereby, in addition to his or her actual damages, both to be recovered by motion in the same action; and a person willfully removing or defacing the notice posted, if done before the sale, or before the satisfaction of the judgment if it be satisfied before the sale, shall be liable to pay five thousand (₱ 5,000.00) pesos to any person injured by reason thereof, in addition to his or her actual damages, to be recovered by motion in the same action. (17)

**SEC. 4.18. No sale if judgment and costs paid.** — At any time before the sale of property on execution, the judgment obligor may prevent the sale by paying the amount required by the execution and the costs that have been incurred therein. (18)

**SEC. 4.19. *How property sold on execution; who may direct manner and order of sale.*** — All sales of property under execution must be made at public auction, to the highest bidder, to start at the exact time fixed in the notice. After sufficient property has been sold to satisfy the execution, no more shall be sold and any excess property or proceeds of the sale shall be promptly delivered to the judgment obligor or his or her authorized representative, unless otherwise directed by the judgment or order of the court. When the sale is of real property, consisting of several known lots, they must be sold separately; or, when a portion of such real property is claimed by a third person, he or she may require it to be sold separately. When the sale is of personal property capable of manual delivery, it must be sold within view of those attending the same and in such parcels as are likely to bring the highest price. The judgment obligor, if present at the sale, may direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels which can be sold to advantage separately. Neither the officer conducting the execution sale, nor his or her deputies, can become a purchaser, nor be interested directly or indirectly in any purchase at such sale. (19)

Article 1491 of the Civil Code of the Philippines as well as Section 7, Republic Act 6713 shall likewise apply. (n)

**SEC. 4.20. *Refusal of purchaser to pay.*** — If a purchaser refuses to pay the amount bid by him or her for property struck off to him or her at a sale under execution, the officer may again sell the property to the highest bidder and shall not be responsible for any loss occasioned thereby; but the court may order the refusing purchaser to pay into the court the amount of such loss, with costs, and may punish him or her for contempt if he or she disobeys the order. The amount of such payment shall be: for the benefit of the person entitled to the proceeds of the execution, unless the execution has been fully satisfied, in which event such proceeds shall be for the benefit of the judgment obligor. The officer may thereafter reject any subsequent bid of such purchaser who refuses to pay. (20)

**SEC. 4.21. *Judgment obligee as purchaser.*** — When the purchaser is the judgment obligee, and no third-party claim has been filed, he or she need not pay the amount of the bid if it does not exceed the amount of his or her judgment. If it does, he or she shall pay only the excess. (21)

**SEC. 4.22. *Adjournment of sale.*** — By written consent of the judgment obligor and obligee, or their duly authorized representatives, the

officer may adjourn the sale to any date and time agreed upon by them. Without such agreement, he or she may adjourn the sale from day to day if it becomes necessary to do so for lack of time to complete the sale on the day fixed in the notice or the day to which it was adjourned. (22)

**SEC. 4.23. Conveyance to purchaser of personal property capable of manual delivery.** — When the purchaser of any personal property, capable of manual delivery, pays the purchase price, the officer making the sale must deliver the property to the purchaser and, if desired, execute and deliver to him or her a certificate of sale. The sale conveys to the purchaser all the rights which the judgment obligor had in such property as of the date of the levy on execution or preliminary attachment. (23)

**SEC. 4.24. Conveyance to purchaser of personal property not capable of manual delivery.** — When the purchaser of any personal property, not capable of manual delivery, pays the purchase price, the officer making the sale must execute and deliver to the purchaser a certificate of sale. Such certificate conveys to the purchaser all the rights which the judgment obligor had in such property as of the date of the levy on execution or preliminary attachment. (24)

**SEC. 4.25. Conveyance of real property; certificate thereof given to purchaser and filed with registry of deeds.** — Upon a sale of real property, the officer must give to the purchaser a certificate of sale containing:

- (a) A particular description of the real property sold;
- (b) The price paid for each distinct lot or parcel;
- (c) The whole price paid by him;
- (d) A statement that the right of redemption expires one (1) year from the date of the registration of the certificate of sale.

**Such certificate must be registered in the registry of deeds of the place where the property is situated.** (25)

**SEC. 4.26. Certificate of sale where property claimed by third person.** — When a property sold by virtue of a writ of execution has been claimed by a third person, the certificate of sale to be issued by the sheriff pursuant to Sections 23, 24 and 25 of this Rule shall make express mention of the existence of such third-party claim. (26)

**SEC. 4.27. Who may redeem real property so sold.** — Real property sold as provided in the last preceding section, or any part thereof sold separately, may be redeemed in the manner hereinafter provided, by the following persons:

- (a) The judgment obligor, or his or her successor in interest in the whole or any part of the property;
- (b) A creditor having a lien by virtue of an attachment, judgment or mortgage on the property sold, or on some part thereof, subsequent to the lien under which the property was sold. Such redeeming creditor is termed a redemptioner. (27)

**SEC. 4.28. Time and manner of and amounts payable on, successive redemptions; notice to be given and filed.** — The judgment obligor, or redemptioner, may redeem the property from the purchaser, at any time within one (1) year from the date of the registration of the certificate of sale, by paying the purchaser the amount of his or her purchase, with one *per centum* per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last named amount at the same rate; and if the purchaser be also a creditor having a prior lien that of the redemptioner, other than the judgment under which such purchase was made, the amount of such' other lien, with interest.

Property so redeemed may again be redeemed within sixty (60) days after the last redemption upon payment of the sum paid on the last redemption, with two *per centum* thereon in addition, and the amount of any assessments or taxes which the last redemptioner may have paid thereon after redemption by him, with interest on such last-named amount, and in addition, the amount of any liens held by said last redemptioner prior to his or her own, with interest. The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within sixty (60) days after the last redemption, on paying the sum paid on the last previous redemption, with two *per centum* thereon in addition, and the amounts of any assessments or taxes which the last previous redemptioner paid after the redemption thereon, with interest thereon, and the amount of any liens' held by the last redemptioner prior to his or her own, with interest.

**Written notice of any redemption must be given to the officer who**

made the sale and a duplicate filed with the registry of deeds of the place, and if any assessments or taxes are paid by the redemptioner or if he or she has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the officer and filed with the registry of deeds; if such notice be not filed, the property may be redeemed without paying such assessments, taxes, or liens. (28)

**SEC. 4.29.** Effect of redemption by judgment obligor, and a certificate to be delivered and recorded thereupon; to whom payments on redemption made. — If the judgment obligor redeems, he or she must make the same payments as are required to effect a redemption by a redemptioner, whereupon, no further redemption shall, be allowed and he or she is restored to his or her estate. The person to whom the redemption payment is made must execute and deliver to him or her a certificate of redemption acknowledged before a notary public or other officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the registry of deeds of the place in which the property is situated, and the registrar of deeds must note the record thereof on the margin of the record of the certificate of sale. The payments mentioned in this and the last preceding sections may be made to the purchaser or redemptioner, or for him or her to the officer who made the sale. (29)

**SEC. 4.30.** *Proof required of redemptioner.* — A redemptioner must produce to the officer, or person from whom he or she seeks to redeem, and serve with his or her notice to the officer a copy of the judgment or final order under which he or she claims the right to redeem, certified by the clerk of the court wherein the judgment or final order is entered; or, if he or she redeems upon a mortgage or other lien, a memorandum of the record thereof, certified by the registrar of deeds; or an original or certified copy of any assignment necessary to establish his or her claim; and an affidavit executed by him or her or his or her agent, showing the amount then actually due on the lien. (30)

**SEC. 4.31.** *Manner of using premises pending redemption; waste restrained.* — Until the expiration of the time allowed for redemption, the court may, as in other proper cases, restrain the commission of waste on the property by injunction, on the application of the purchaser or the judgment obligor, with or without notice; but it is not waste for a person in possession of the property at the time of the sale, or entitled to possession afterwards,

during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or to use it in the ordinary course of **administration**; or to make the necessary repairs to buildings thereon while he or she occupies the property. (31a)

**SEC. 4.32. *Rents, earnings and income of property pending redemption.*** — The purchaser or a redemptioner shall not be entitled to receive the rents, earnings and income of the property sold on execution, or the value of the use and occupation thereof when such property is in the possession of a tenant. All rents, earnings and income derived from the property pending redemption shall belong to the judgment obligor until the expiration of his or her period of redemption. (32)

**SEC. 4.33. *Deed and possession to be given at expiration of redemption period; by whom executed or given.*** — If no redemption is made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of the registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his or her successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.

**Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor.** (33)

**SEC. 4.34. *Recovery of price if sale not effective; revival of judgment.*** — If the purchaser of real property sold on execution, or his or her successor in interest, fails to recover the possession thereof, or is evicted therefrom, in consequence of irregularities in the proceedings concerning the sale, or because the judgment has been reversed or set aside, or because the property sold was exempt from execution, or because a third person has

vindicated his or her claim, to the property, he or she may on motion in the same action or in a separate action recover from the judgment obligee the price paid, **and from the judgment obligor the portion of the purchase price that may have been delivered to the judgment obligor, and in both cases with interest from the date of execution sale.** (34a)

**SEC. 4.35. Right to contribution or reimbursement.** — When property liable to an execution against several persons is sold thereon, and more than a due proportion of the judgment is satisfied out of the proceeds of the sale of the property of one of them, or one of them pays, without a sale, more than his or her proportion, he or she may compel a contribution from the others; and when a judgment is upon an obligation of one of them, as security for another, and the surety pays the amount, or any part thereof, either by sale of his or her property or before sale, he or she may compel repayment from the principal. (35)

**SEC. 4.36. Examination of judgment obligor when judgment unsatisfied.** — When the return of a writ of execution issued against property of a judgment obligor, or any one of several obligors in the same judgment, shows that the judgment remains unsatisfied, in whole or in part, the judgment obligee, at any time after such return is made, shall be entitled to an order from the court which rendered the said judgment, requiring such judgment obligor to appear and be examined concerning his or her property and income before such court or before a commissioner appointed by it, at a specified time and place; and proceedings may thereupon be had for the application of the property and income of the judgment obligor towards the satisfactions of the judgment. But no judgment obligor shall be so required to appear before a court or commissioner outside the province or city in which such obligor resides or is found. (36)

**SEC. 4.37. Examination of obligor of judgment obligor.** — When the return of a writ of execution against the property of a judgment obligor shows that the judgment remains unsatisfied, in whole or in part, and upon proof to the satisfaction of the court which issued the writ, that a person, corporation, or other juridical entity has property of such judgment obligor or is indebted to him, the court may, by an order, require such person, corporation, or other juridical entity, or any officer or member thereof, to appear before the court or a commissioner appointed by it, at a time and place within the province or city where such debtor resides or is found, and be examined concerning the same. The service of the order shall bind all

credits due the judgment obligor and all money and property of the judgment obligor in the possession or in the control of such person, corporation, or juridical entity from the time of service; and the court may also require notice of such proceedings to be given to any party to the action in such manner as it may deem proper. (37)

**SEC. 4.38. *Enforcement of attendance and conduct of examination.*** — A party or other person may be compelled, by an order or subpoena, to attend before the court or commissioner to testify as provided in the two preceding sections, and upon failure to obey such order or subpoena or to be sworn, or to answer as a witness or to subscribe his or her deposition, may be punished for contempt as in other cases. Examinations shall not be unduly prolonged, but the proceedings may be adjourned from time to time, until they are completed. If the examination is before a commissioner, he or she must take it in writing and certify it to the court. All examinations and answers before a court or commissioner must be under oath, and when a corporation or other juridical entity answers, it must be on the oath of an authorized officer or agent thereof. (38)

**SEC. 4.39. *Obligor may pay execution against obligee.*** — After a writ of execution against property has been issued, a person indebted to the judgment obligor may pay to the sheriff holding the writ of execution the amount of his or her debt or so much thereof as may be necessary to satisfy the judgment, in the manner prescribed in Section of this Rule and the sheriffs receipt shall be a sufficient discharge for the amount so paid or directed to be credited by the judgment obligee on the execution. (39)

**SEC. 4.40. *Order for application of property and income to satisfaction of judgment.*** — The court may order any property of the judgment obligor, or money due him, not exempt from execution, in the hands of either himself or another person, or of a corporation or other juridical entity, to be applied to the satisfaction of the judgment, subject to any prior rights over such property.

If, upon investigation of his or her current income and expenses, it appears that the earnings of the judgment obligor for his or her personal services are more than necessary for the support of his or her family, the court may order that he or she pay the judgment in fixed monthly installments, and upon his or her failure to pay any such installment when due without good excuse, may punish him or her for indirect contempt. (40)

**SEC. 4.41.** *Appointment of receiver.*— The court may appoint a receiver of the property of the judgment obligor. The court may also forbid a transfer or other disposition of, or any interference with, the property of the judgment obligor not exempt from execution. (41)

**SEC. 4.42.** *Sale of ascertainable interest of judgment obligor in real estate.*— If it appears that the judgment obligor has an interest in real estate in the place in which proceedings are had, as mortgagor or mortgagee or otherwise, and his or her interest therein can be ascertained without controversy, the receiver may be ordered to sell and convey such real estate or the interest of the obligor therein; and such sale shall be conducted in all respects in the same manner as is provided for the sale of real estate upon execution, and the proceedings thereon shall be approved by the court before the execution of the deed. (42)

**SEC. 4.43.** *Proceedings when indebtedness denied or another person claims the property.*— If it appears that a person or corporation, alleged to have property of the judgment obligor or to be indebted to him, claims an interest in the property adverse to him or her or denies the debt, the court may authorize, by an order made to that effect, the judgment obligee to institute an action against such person or corporation for the recovery of such interest or debt, forbid a transfer or other disposition of such interest or debt within one hundred twenty (120) days from notice of the order, and may punish disobedience of such order as for contempt. Such order may be modified or vacated at any time by the court, which issued it, or by the court in which the action is brought, upon such terms as may be just. (43)

**SEC. 4.44.** *Entry of satisfaction of judgment by clerk of court.*— Satisfaction of a judgment shall be entered by the clerk of court in the court docket, and in the execution book, upon the return of a writ of execution showing the full satisfaction of the judgment, or upon the filing of an admission to the satisfaction of the judgment executed and acknowledged in the same manner as a conveyance of real property by the judgment obligee or by his or her counsel unless a revocation of his or her authority is filed, or upon the endorsement of such admission by the judgment obligee or his or her counsel on the face of the record of the judgment. (44)

**SEC. 4.45.** *Entry of satisfaction with or without admission.*— Whenever a judgment is satisfied in fact, or otherwise than upon an execution, on demand of the judgment obligor, the judgment obligee or his

or her counsel must execute and acknowledge, or indorse, an admission of the satisfaction as provided in the last preceding section, and after notice and upon motion the court may order either the judgment obligee or his or her counsel to do so, or may order the entry of satisfaction to be made without such admission. (45)

**SEC. 4.46. *When principal bound by judgment against surety.*** — When a judgment is rendered against a party who stands as surety for another, the latter is also bound from the time that he or she has notice of the action or proceeding, and an opportunity at the surety's request to join in the defense. (46)

**SEC. 4.47. *Effect of judgments or final orders.*** — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

- (a) In case of a judgment or final order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a deceased person, or in respect to the personal, political, or legal condition or status of a particular person or his or her relationship to another, the judgment or final order is conclusive upon the title to the thing, the will or administration, or the condition, status or relationship of the person; however, the probate of a will or granting of letters of administration shall only be *prima facie* evidence of the death of the testator or intestate;
- (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and
- (c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or

necessary thereto. (47)

**SEC. 4.48.** Foreign judgments; how commenced and their effect. —

- (a) ***How commenced*** — A complaint to enforce the foreign judgment shall be filed with the proper court.
- (b) ***Effect*** — The effect of a judgment or final order of a tribunal of a foreign country, having jurisdiction to render the judgment or final order, is as follows:
  - 1. In case of a judgment or final order **against** a specific thing, the judgment or final order is conclusive upon the title to the thing; and
  - 2. In case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.

**In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.** (48a)

**SEC. 4.49. *Effect of a foreign arbitral award.*** — The judgment or final order of a foreign arbitral body having jurisdiction to render the judgment or final order shall be binding and conclusive on the parties. An action for confirmation and enforcement of a foreign arbitral award shall be subject to the following:

- (a) ***Foreign arbitral award not subject to court review.*** — A foreign arbitral award shall not be subject to judicial review. Any judicial inquiry will be limited to the question of whether there was an agreement to arbitrate or whether the arbitration was conducted in a lawful manner.
- (b) ***Confirmation of foreign arbitral award.*** — A court must confirm a foreign arbitral award unless:
  - 1. It is shown that there is no valid agreement to arbitrate;
  - 2. It is shown that the arbitration was conducted in an unlawful manner or not in accordance

with the agreement of the parties.

- (c) The award is attended by fraud, collusion or a clear mistaken of fact or law. (n)

## TITLE IX: APPEALS

### Rule 1

#### PROCEDURE FOR APPEALS (R40)

This Chapter shall govern review by appeal of a judgment, final order or resolution that disposes of or terminates a case. The procedure for such appeals shall be uniform in all court levels, save when otherwise provided under these Rules. (n)

### Rule 2

#### APPEALS FROM FIRST LEVEL COURTS (R41)

**SECTION 2.1.** *Subject of appeal.* — An appeal may be taken from a judgment, order **or resolution of a First Level Court** that **finally** disposes of **a** case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

- (a) An order denying a petition for relief from judgment;
- (b) An interlocutory order;
- (c) An order disallowing or dismissing an appeal;
- (d) An order denying a motion to set aside a judgment by compromise **agreement**, consent, or confession on the ground of fraud, mistake or duress, or any other ground vitiating consent;
- (e) An order of execution;
- (f) A judgment or final order **or resolution** for or against one or more of several parties, or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows **it**;
- (g) An order dismissing an action without prejudice.

In all these instances where an appeal is disallowed, the aggrieved

party may file a special civil action for certiorari for grave abuse of discretion. (1a)

**SEC. 2.2. *How to appeal.*** — An appeal from a judgment, order or resolution of a First Level Court that finally disposes of a case shall be taken by filing a notice of appeal with the same court that rendered the judgment, order or resolution, within fifteen (15) days from receipt of such judgment, order or resolution. Appellate docket fees shall be paid within the same period of fifteen (15) days and proof of such payment shall be attached to the notice of appeal. No motion for extension of time to file a notice of appeal or pay the appeal fees shall be granted.

**The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.**

Should a party file a motion for new trial or reconsideration and the motion be denied, the appellant shall have a fresh period of fifteen (15) days from receipt of the order of denial within which to file a notice of appeal. (n)

**SEC. 2.3. *Notice of appeal.*** — The notice of appeal shall indicate the parties to the appeal, the judgment or final order or part thereof appealed from, and the material dates showing the timeliness of the appeal. (5a)

**SEC. 2.4. *Record on appeal.*** — A record on appeal will be required in cases of multiple or separate appeals. In such cases, the appellant shall file a notice of appeal and record on appeal simultaneously within thirty (30) days from notice of the judgment or final order or resolution, or of the order denying the motion for new trial or reconsideration.

**A record on appeal shall simply be an exact copy of the pertinent portion of the original record certified true and correct by the Branch Clerk of Court of the court whose judgment, order or resolution is the subject of an appeal. The certification together with a table of contents shall accompany the record on appeal. In appeals, which raise factual issues, the record on appeal shall also include all transcripts of stenographic notes and certified copies of documentary evidence. Object evidence shall be transmitted to the appellate court only when required by the latter.**

The cost for the certification and reproduction of the record shall be charged to the appellant. (n)

**SEC. 2.5. Approval of notice of appeal.** — Within five (5) days from receipt of a notice of appeal, the First Level Court shall act on the same either to approve it, if filed seasonably and with full payment of the required fees, or to deny it, if the appeal is improper, if filed late or if no proof of payment is submitted. (7a)

**SEC. 2.6. Procedure after approval of notice of appeal.** — Upon approval by the First Level Court of the notice of appeal, the branch clerk of court shall cause the completion of the records including the transcripts of stenographic notes. The court shall direct the appellant to submit the appellant's brief within thirty (30) days from receipt of the order to file it, and the appellee to submit the appellee's brief within thirty (30) days from receipt of the order to file appellee's brief.

No reply brief shall be filed. (n)

**SEC. 2.7. Extension of time for filing briefs.** — No extension of time for the filing of an appeal brief shall be granted. However, for most compelling reason, upon motion filed before the expiration of the period sought to be extended, the First Level Court may grant only one thirty (30) day extension of the period to file appeal brief. (n)

**SEC. 2.8. Appeal briefs.** — The parties' respective briefs on appeal shall follow the format and other requirements under Title IX, Rule 5. (n)

**SEC. 2.9. Perfection of appeal.** — An appeal of a party shall be deemed perfected as to him or her upon the timely filing of a notice of appeal, with a record on appeal when required, and payment of the appeal fees.

The court loses jurisdiction over the case upon the perfection of the appeals and the expiration of the time to appeal of the other parties. (9a)

Prior to transmittal of the complete records with the parties' briefs to the appellate court, the court which issued the judgment, order or resolution subject of the appeal retains residual jurisdiction over the case and may issue orders for the protection and preservation of the rights of the parties which do not involve any issue raised on appeal, approve compromises, permit appeals of indigents, grant execution pending appeal in accordance with Section 2 of Title IX, Rule 4, and allow the withdrawal of an appeal. (n)

**SEC. 2.10. Transmittal of record to appellate court.** — Within ninety

(90) days from the perfection of an appeal, the Branch Clerk of Court of the court whose judgment, order or resolution is subject of the appeal, shall undertake the following:

- (a) Verify the correctness and completeness of the original record or record on appeal, as the case may be, and **issue a certification to that effect**.
- (b) **If incomplete, to exert all efforts to complete such record or record on appeal. If despite these efforts, the record could not be completed, the Branch Clerk of Court shall state this fact in the letter of transmittal to the appellate court, specifying the missing parts of the record and the reason for the loss.**
- (c) **Collate copies of all transcripts of stenographic notes for inclusion in the record to be transmitted, with corresponding references in the Table of Contents to the names of the witnesses and the pages of the record where the transcripts of their testimonies are found.**
- (d) **Transmit the complete record, together with the briefs, to the appellate court with a letter of transmittal. The parties shall be furnished copies of the letter of transmittal.** (10a, 12a)

**SEC. 2.11. Procedure in the Second Level Court.** — The Second Level Court, upon receipt of the complete record, together with the briefs, shall issue an order declaring the appeal submitted for judgment. It shall then decide the appeal within ninety (90) days from its submission for judgment.

(n)

**SEC. 2.12. Grounds for dismissal of appeal.** — An appeal may be dismissed by the first level court, *motu proprio* or on motion of the appellee, on the following grounds:

- (a) **Failure to file the notice of appeal or the record on appeal within the period prescribed by these Rules;**
- (b) **Failure of the appellant to pay the proper docket and other lawful fees as provided in Section 2 of this Rule;**
- (c) **Failure of the appellant to serve and file the required**

**number of copies of his or her brief within the time provided by these Rules; and**

- (d) **Any other ground that shows that the appeal is improper.** (n)

**SEC. 2.13. *Finality of decision.*** — The decision of the Second Level Court on the appeal shall be final and unappealable. For grave abuse of discretion amounting to lack of jurisdiction or excess of jurisdiction, the decision of the Second Level Court on the appeal may be made subject of a petition for certiorari with the Court of Appeals under Title X, Rule 5. (n)

**SEC. 2.14. *Appeals from orders dismissing case without trial; lack of jurisdiction.*** — If an appeal is taken from an order **or resolution of the First Level Court** dismissing the case without a trial on the merits, the **Second Level Court shall:**

- (a) Try the case **and decide it** on the merits, as if it was originally filed with it, **if it affirms the dismissal and the ground for dismissal is lack of jurisdiction of the First Level Court over the subject matter, and the Second Level Court has jurisdiction over it.**
- (b) **In cases governed by the rule on summary procedure, if the case did not reach the preliminary conference, remand the case to the First Level Court for further proceedings if it reverses the dismissal.**
- (c) **If there are no further proceedings that may be conducted below, render a judgment on the merits of the appeal if it reverses the First Level Court, as provided in paragraphs (a) and (b).** (n)

**If the case was tried on the merits by the First Level Court which does not have jurisdiction over the subject matter, and the Second Level Court has original jurisdiction over it, the Second Level Court shall decide the case on the merits **without prejudice to the admission of amended pleadings and** further reception of evidence, if justice so requires. (R40 S8a)**

## Rule 3

### APPEALS FROM SECOND LEVEL COURTS (R42)

**SECTION 3.1. *Subject of appeal.*** — An appeal may be taken from a judgment, order or resolution of a Second Level Court that finally disposes of a case, or of a particular matter therein when declared by these Rules to be appealable, except orders specified under Title VIII, Rule 2, Section 1 of these Rules. (n)

**SEC. 3.2. *How to appeal.*** — An appeal from a judgment, order or resolution of a Second Level Court that finally disposes of a case shall be taken by filing a notice of appeal with the same court that rendered the judgment, order or resolution, within fifteen (15) days from receipt of such judgment, order or resolution. Appellate docket fees shall be paid within the same period of fifteen (15) days and proof of such payment shall be attached to the notice of appeal. No motion for extension of time to file a notice of appeal or pay the appeal fees shall be granted.

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

Should a party file a motion for new trial or reconsideration and the motion be denied, the appellant shall have a fresh period of fifteen (15) days from receipt of the order of denial within which to file a notice of appeal. (n)

**SEC. 3.3. *Notice of appeal.*** — The notice of appeal shall indicate the parties to the appeal, the judgment or final order or part thereof appealed from, and the material dates showing the timeliness of the appeal. (R41 S5a)

**SEC. 3.4. *Record on appeal.*** — A record on appeal shall be required in cases of multiple or separate appeals. In such cases, the appellant shall file a notice of appeal and record on appeal simultaneously within thirty days from notice of the judgment or final order or resolution, or of the order denying the motion for new trial or reconsideration.

A record on appeal shall simply be an exact copy of the pertinent portion of the original record certified true and correct by the Branch Clerk of Court of the court whose judgment, order or resolution is the

**subject of an appeal.** The certification together with a table of contents shall accompany the record on appeal. In appeals, which raise factual issues, the record on appeal shall also include all transcripts of stenographic notes and certified copies of documentary evidence. Object evidence shall be transmitted to the appellate court only when required by the latter.

The cost for the certification and reproduction of the record shall be charged to the appellant. (n)

**SEC. 3.5. Approval of notice of appeal.** — Within five (5) days from receipt of a notice of appeal, the Second Level Court shall act on the same either to approve it, if filed seasonably and with full payment of the required fees, or to deny it, if the appeal is improper, if filed late or if no proof of payment is submitted. (R41 S7a)

**SEC. 3.6. Procedure after approval of notice of appeal.** — If the Second Level Court approves the notice of appeal, it shall direct the appellant to submit the appellant's brief within thirty (30) days from receipt of the order to file it, and the appellee to submit the appellee's brief within thirty (30) days from receipt of the appellant's brief.

No reply brief shall be filed. (n)

**SEC. 3.7. Extension of time for filing briefs.** — No extension of time for the filing of an appeal brief shall be granted. However, for most compelling reason, upon motion filed before the expiration of the period sought to be extended, the Regional Trial Court may grant only one thirty (30) day extension of the period to file appeal brief. (n)

**SEC. 3.8. Appeal briefs.** — The parties' respective briefs on appeal shall follow the format and other requirements under Title VIII, Rule 5. (n)

**SEC. 3.9. Perfection of appeal.** — An appeal of a party shall be deemed perfected as to him or her upon the timely filing of a notice of appeal, with a record on appeal when required, and payment of the appeal fees.

The court loses jurisdiction over the case upon the perfection of the appeals and the expiration of the time to appeal of the other parties. (R41 S7a)

Prior to transmittal of the complete records with the parties' briefs to the appellate court, the court which issued the judgment, order or resolution subject of the appeal, retains residual jurisdiction over the case and may issue orders for the protection and preservation of the rights of the parties which do not involve any issue raised on appeal, approve compromises, permit appeals of indigents, grant execution pending appeal in accordance with Title VIII, Rule 4 Section 2, and allow the withdrawal of an appeal. (n)

**SEC. 3.10. *Transmittal of record to appellate court.*** — Within **ninety (90) days** from the perfection of **an appeal, the Branch Clerk of Court of the court whose judgment, order or resolution is subject of the appeal, shall undertake the following:**

- (a) Verify the correctness and completeness of the original record or record on appeal, as the case may be, and **issue a certification to that effect.**
- (b) **If incomplete, to exert all efforts to complete such record or record on appeal.** If despite these efforts, the record could not be completed, the Branch Clerk of Court shall state this fact in a letter of transmittal to the appellate court, specifying the missing parts of the record and the reason for the loss. The parties shall be furnished copies of the letter of transmittal.
- (c) **Collate copies of all transcripts of stenographic notes for inclusion in the record to be transmitted, with corresponding references in the table of contents to the names of the witnesses and the pages of the record where the transcripts of their testimonies are found.**
- (d) **Transmit the record or record on appeal, as the case may be, together with the briefs, to the appellate court under cover of a letter of transmittal.** The parties shall be furnished copies of the letter of transmittal.  
(R41 S10, 12a)

**SEC. 3.11. *Procedure in the Court of Appeals.*** — The Court of Appeals, upon receipt of the complete record together with the briefs, shall issue an order declaring the appeal submitted for judgment. It shall then decide the appeal. (n)

**SEC. 3.12. *Grounds for dismissal of appeal.*** — An appeal may be dismissed by the second level court, *motu proprio* or on motion of the appellee, on the following grounds:

- (a) Failure to file the notice of appeal or the record on appeal within the period prescribed by these Rules;
- (b) Failure of the appellant to pay the docket and other lawful fees as provided in Section 2 of this Rule;
- (c) Failure of the appellant to serve and file the required number of copies of his or her brief within the time provided by these Rules; and
- (d) Any other ground that shows that the appeal is improper. (n)

**SEC. 3.13. *Finality of decision.*** — The decision of the Court of Appeals on the appeal shall be final and unappealable. For grave abuse of discretion amounting to lack of jurisdiction or excess of jurisdiction, the decision of the Court of Appeals on the appeal may be made subject of a petition for certiorari with the Supreme Court under Title XI, Rule 5. (n)

## Rule 4

### APPEALS FROM QUASI-JUDICIAL AGENCIES (R43)

**SECTION 4.1. *Scope.*** — This Rule shall apply to appeals from judgments or final orders, resolutions, awards, of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. **These agencies include** the Civil Service Commission, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security System, Government Service Insurance System, Civil Aeronautics Board, **Intellectual Property Office**, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, **Ombudsman** and voluntary arbitrators authorized by law. (1a)

**SEC. 4.2. *Cases not covered.*** — This Rule shall not apply to judgments or final orders issued under the Labor Code of the Philippines. (2)

**SEC. 4.3. *Where to appeal.*** — An appeal under this Rule may be taken to the Court of Appeals within the period and in the manner herein provided, whether the appeal involves questions of fact, of law, or mixed questions of fact and law. (3)

**SEC. 4.4. *Period of appeal.*** — The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectiveness, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the agency *a quo*. Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (4)

**SEC. 4.5. *How appeal taken.*** — Appeal shall be taken by filing a verified petition for review in **three (3)** legible copies with the Court of Appeals, with proof of service of a copy thereof on the adverse party and on the agency *a quo*. The original copy of the petition intended for the Court of Appeals shall be indicated as such by the petitioner.

**Upon the filing of the petition, the petitioner shall pay to the clerk of court of the Court of Appeals the docketing and other lawful fees and deposit the proper amount for costs. Exemption from payment of docketing and other lawful fees and the deposit for costs may be granted by the Court of Appeals upon a verified motion setting forth valid grounds therefor. If the Court of Appeals denies the motion, the petitioner shall pay the docketing and other lawful fees and deposit for costs within fifteen (15) days from notice of the denial. (5a)**

**SEC. 4.6. *Contents of the petition.*** — The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed

from, together with certified true copies of such material portions of the record referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of **Title IV, Rule 8, Section 5**. The petition shall state the specific material dates showing that it was filed within the period fixed herein. (6a)

**SEC. 4.7. Effect of failure to comply with requirements.** — The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof. (7)

**SEC. 4.8. Action on the petition.** — The Court of Appeals may require the respondent to file a comment on the petition, within ten (10) days from notice, or dismiss the petition if it finds the same to be patently without merit, prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration. (8)

**SEC. 4.9. Contents of comment.** — The comment shall be filed within ten (10) days from notice in **three (3)** legible copies and accompanied by clearly legible certified true copies of such material portions of the record referred to therein together with other supporting papers. The comment shall (a) point out insufficiencies or inaccuracies in petitioner's statement of facts and issues; and (b) state the reasons why the petition should be denied or dismissed. A copy thereof shall be served on the petitioner, and proof of such service shall be filed with the Court of Appeals. (9a)

**SEC. 4.10. Due course.** — If upon the filing of the comment or such other pleadings or documents as may be required or allowed by the Court of Appeals or upon the expiration of the period for the filing thereof, and on the basis of the petition or the records the Court of Appeals finds *prima facie* that the court or agency concerned has committed errors of fact or law that would warrant reversal or modification of the award, judgment, final order or resolution sought to be reviewed, it may give due course to the petition; otherwise, it shall dismiss the same. The findings of fact of the agency concerned, when supported by substantial evidence, shall be binding on the Court of Appeals. (10)

**SEC. 4.11. Transmittal of record.** — Within fifteen (15) days from

notice that the petition has been given due course, the Court of Appeals may require the agency concerned to transmit the original or a legible certified true copy of the entire record of the proceeding under review. The record to be transmitted may be abridged by agreement of all parties to the proceeding. The Court of Appeals may require or permit subsequent correction of or addition to the record. (11)

**SEC. 4.12. *Effect of appeal.*** — The appeal shall not stay the award, judgment, final order of resolution sought to be reviewed unless the Court of Appeals shall direct otherwise upon such terms as it may deem just. (12)

**SEC. 4.13. *Submission for decision.*** — If the petition is given due course, the Court of Appeals may set the case for oral argument or require the parties to submit memoranda within a period of fifteen (15) days from notice. The case shall be deemed submitted for decision upon the filing of the last pleading or memorandum required by these Rules or by the Court of Appeals. (13)

**SEC. 4.14. *Finality of decision.*** — **The decision of the Court of Appeals on the appeal shall be final and unappealable. For grave abuse of discretion amounting to lack of jurisdiction or excess of jurisdiction, the decision of the Court of Appeals on the appeal may be made subject of a petition for certiorari with the Supreme Court under Title XI, Rule 5. (n)**

## RULE 5

### REQUIREMENTS FOR APPEAL BRIEFS (R44)

**SECTION 5.1. *Title of case.*** — In all cases appealed under Title VIII, Rule 2 and Title VIII, Rule 3, the title of the case shall remain as it was in the court of origin, but the party appealing the case shall be further referred to as the appellant and the adverse party as the appellee. (n)

**SEC. 5.2. *Format and style.*** — The parties' respective briefs shall conform to the following format and style:

- (a) It shall be typed or printed single-spaced, with a one and a half (1½) space between paragraphs.

- (b) It shall be in size 14 font.
- (c) It shall be typed or printed on a 13-inch by 8.5-inch white bond paper.
- (d) The margins shall be 1.5 inches on the left hand of the page, 1.2 inch on the right hand of the page, 1.2 inches at the top of the page, and 1 inch at the bottom of the page. Every page must be consecutively numbered at the center of the bottom margin of each page. (n)

**SEC. 5.3. *Copies to be Filed.*** — Unless directed otherwise by the Appellate Court, the number of copies of a party's brief shall be:

- (a) In the Supreme Court, one (1) Original so marked and four (4) copies, unless the case is referred to the Court En Banc, in which event, ten (10) additional copies shall be filed with the original.  
For a Division case, two (2) sets of annexes shall be filed, one (1) attached to the original brief, and an extra copy.
- (b) In the Court of Appeals and the Sandiganbayan, one (1) original so marked and two (2) copies, each with annexes.
- (c) In the Court of Tax Appeals, one (1) original so marked and Two (2) copies, each with annexes. If the appeal is to the Court of Tax Appeals En Banc, one (1) original so marked and eight copies, each with annexes.
- (d) In Second and First Level Courts, One (1) original so marked with complete annexes. (n)

**SEC. 5.3. *Contents of appellant's brief.*** — The appellant's brief shall contain, in the order herein indicated, the following:

- (a) A subject index of the matters in the brief and page references, and a table of cases alphabetically arranged, textbooks and statutes cited with references to the pages where they are cited;
- (b) An assignment of errors, which errors shall be stated in a

**direct and specific manner** without repetition and numbered consecutively;

- (c) Under the heading “Statement of the Case,” a clear and concise statement of the nature of the action, a summary of the proceedings, the appealed rulings and orders of the court, the nature of the judgment and any other matters necessary to an understanding of the nature of the controversy, with page references to the record;
- (d) Under the heading “Statement of Facts,” **the following:**
  1. **A statement whether appellant is questioning the factual findings of the trial court. Where the appellant does not question the factual findings of the trial court, the appellant shall adopt the factual findings in the appealed decision.**
  2. **Where the appellant questions the factual findings of the trial court, the statement of facts must include a clear and concise statement-of the facts admitted by both parties and of those in controversy, citing specific evidence on record that establish each statement as a fact, whether evidentiary or based on admissions or stipulations, with appropriate references to the pages in the record where they may be found.**
- (e) Under the heading “Arguments,” the appellant’s arguments on each assignment of error with page references to the record. The authorities relied upon shall be cited by the page of the report at which the case begins and the page of the report on which the citation is found;
- (f) Under the heading “**Prayer**,” a specification of the order or judgment which the appellant seeks; and
- (g) In cases not brought up by record on appeal, the appellant’s brief shall contain, as an appendix, a copy of the judgment or final order appealed from. (13a)

**SEC. 5.4. *Contents of appellee’s brief.*** — The appellee’s brief shall contain, in the order herein indicated, the following:

- (a) A subject index of the matters in the brief with page references, and a table of cases alphabetically arranged, textbooks and statutes cited with references to the pages where they are cited;
- (b) Under the heading "Statement of Facts," the appellee shall state that he or she accepts the statement of facts in the appellant's brief, or under the heading "Counter-Statement of Facts," he or she shall point out such insufficiencies or inaccuracies as he or she believes exist in the appellant's statement of facts with references to the pages of the record in support thereof, but without repetition of matters in the appellant's statement of facts; and
- (c) Under the heading "Arguments," the appellee shall set forth his or her arguments in the case on each assignment of error with page references to the record. The authorities relied on shall be cited by the page of the report at which the case begins and the page of the report on which the citation is found. (14a)

**SEC. 5.5. *Questions that may be raised on appeal.***— Whether or not the appellant has filed a motion for new trial in the court below, he or she may include in his or her assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties. (15)

## Rule 6

### APPEAL BY CERTIORARI WITH THE SUPREME COURT (R45)

**SECTION 6.1. *Filing of petition with Supreme Court.***— A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed

in the same action or proceeding at any time during its pendency. (1)

**SEC. 6.2. *Time for filing; extension.*** — The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition. (2)

**SEC. 6.3. *Docket and other lawful fees; proof of service of petition.*** — Unless *he or she* has theretofore done so, the petitioner shall pay the corresponding docket and other lawful fees to the clerk of court of the Supreme Court and deposit the **proper** amount for costs at the time of the filing of the petition. Proof of service of a copy thereof on the lower court concerned and on the adverse party shall be submitted together with the petition. (3a)

**SEC. 6.4. *Contents of petition.*** — The petition shall be filed in **five (5)** copies, with the original copy intended for the court being indicated as such by the petitioner, **unless the case is referred to the Court En Banc, in which event, ten (10) additional copies shall be filed with the original.** The petition shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court *a quo* and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) contain a sworn certification against forum shopping as provided in Title IV, **Rule 8, Section 3.** (4a)

**SEC. 6.5. *Dismissal or denial of petition.*** — The failure of the petitioner to comply with any of the foregoing requirements regarding the

payment of the docket and other lawful fees, deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

**The Supreme Court may on its own initiative deny the petition on the ground that the appeal is patently without merit, or is prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration. (5)**

**SEC. 6.6. *Review discretionary.*** — A review is not a matter of right, but of sound judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of the reasons which will be considered:

- (a) When the court a quo has decided a question of substance, not theretofore determined by the Supreme Court, or has decided it in a way probably not in accord with law or with the applicable decisions of the Supreme Court; or
- (b) When the court a quo has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by a lower court, as to call for an exercise of the power of supervision. (6)

**SEC. 6.7. *Pleadings and documents that may be required; sanctions.*** — For purposes of determining whether the petition should be dismissed or denied pursuant to Section 5 of this Rule, or where the petition is given due course under Section 8 hereof, the Supreme Court may require or allow the filing of such pleadings, briefs, memoranda or documents as it may deem necessary within such periods and under such conditions as it may consider appropriate, and impose the corresponding sanctions in case of non-filing or unauthorized filing of such pleadings and documents or non-compliance with the conditions thereof. (7)

**SEC. 6.8. *Due course; elevation of records.*** — If the petition is given due course, the Supreme Court may require the elevation of the complete record of the case or specified parts thereof within fifteen (15) days from notice. (8)

**SEC. 6.9. *Rule applicable to both civil and criminal cases.*** — The

mode of appeal prescribed in this Rule shall be applicable to both civil and criminal cases, except in criminal cases where the penalty imposed is *reclusion perpetua* or life imprisonment. (9a)

## TITLE X: PROCEDURE IN THE COURT OF APPEALS

### Rule 1

#### **ORIGINAL CASES (R46)**

**SECTION 1.1.** *Title of cases.* — In all cases originally filed in the Court of Appeals, the party instituting the action shall be called the petitioner and the opposing party the respondent. (1)

**SEC. 1.2.** *To what actions applicable.* — This Rule shall apply to original actions for *certiorari*, *prohibition*, *mandamus* and *quo warranto*. (2)

**Except as otherwise provided, the actions for annulment of judgment shall be governed by Title IX, Rule 2, for certiorari, prohibition and mandamus by Title X, Rule 5, and for quo warranto by Title XI, Rule 6.**

**SEC. 1.3.** *Contents and filing of petition; effect of non-compliance with requirements.* — The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

In actions filed under **Title XI, Rule 5**, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.

It shall be filed in **three (3)** clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his or her duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his or her duly authorized representative. The other requisite number of copies of the petition shall be

accompanied by clearly legible plain copies of all documents attached to the original.

The petitioner shall also submit together with the petition a sworn certification that he or she has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he or she must state the status of the same; and if he or she should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he or she undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

The petitioner shall pay the corresponding docket and other lawful fees to the clerk of court and deposit the **proper** amount for costs at the time of the filing of the petition.

**The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.**  
**(3a)**

**SEC. 1.4. Jurisdiction over person of respondent, how acquired.** — The court shall acquire jurisdiction over the person of the respondent by the service on him or her of its order or resolution indicating its initial action on the petition or by his or her voluntary submission to such jurisdiction. (4)

**SEC. 1.5. Action by the court.** — The court may dismiss the petition outright with specific reasons for such dismissal or require the respondent to file a comment on the same within ten (10) days from notice. Only pleadings required by the court shall be allowed. All other pleadings and papers, may be filed only with leave of court. (5)

**SEC. 1.6. Determination of factual issues.** — Whenever necessary to resolve factual issues, the court itself may conduct hearings thereon or delegate the reception of the evidence on such issues to any of its members or to an appropriate court, agency or office. (6)

**SEC. 1.7. Effect of failure to file comment.** — When no comment is filed by any of the respondents, the case may be decided on the basis of the record, without prejudice to any disciplinary action which the court may take against the disobedient party. (7)

## Rule 2

### ANNULMENT OF JUDGMENTS, ORDERS, AND RESOLUTIONS (R47)

**SECTION 2.1.** *Coverage.* — This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. (1)

**SEC. 2.2.** *Grounds for annulment.* — The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.

**Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief. (2)**

**SEC. 2.3.** *Period for filing action.* — If based on extrinsic fraud, the action must be filed within four (4) years from its discovery; and if based on lack of jurisdiction, before it is barred by laches or estoppel. (3)

**SEC. 2.4.** *Filing and contents of petition.* — The action shall be commenced by filing a verified petition alleging therein with particularity the facts and the law relied upon for annulment, as well as those supporting the petitioner's good and substantial cause of action or defense, as the case may be.

The petition shall be filed in **three (3)** clearly legible copies, together with sufficient copies corresponding to the number of respondents. A certified true copy of the judgment or final order or resolution shall be attached to the original copy of the petition intended for the court and indicated as such by the petitioner.

The petitioner shall also submit together with the petition affidavits of witnesses or documents supporting the cause of action or defense and a sworn certification that he or she has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he or she must state the status of the same, and if he or she should thereafter learn that a similar action or proceeding has been filed or is pending

**before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he or she undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom. (4)**

**SEC. 2.5. Action by the court.** — Should the court find no substantial merit in the petition, the same may be dismissed outright with specific reasons for such dismissal.

**Should *prima facie* merit be found in the petition, the same shall be given due course and summons shall be served on the respondent. (5)**

**SEC. 2.6. Procedure.** — The procedure in ordinary civil cases shall be observed. Should a trial be necessary, the reception of the evidence may be referred to a member of the court or a judge of a Regional Trial Court. (6)

**SEC. 2.7. Effect of judgment.** - A judgment of annulment shall set aside the questioned judgment or final order or resolution and render the same null and void, without prejudice to the original action being refiled in the proper court. However, where the judgment or final order or resolution is set aside on the ground of extrinsic fraud, the court may on motion order the trial court to try the case as if a timely motion for new trial had been granted therein. (7)

**SEC. 2.8. Suspension of prescriptive period.** — The prescriptive period for the refiling of the aforesaid original action shall be deemed suspended from the filing of said original action until the finality of the judgment of annulment. However, the prescriptive period shall not be suspended where the extrinsic fraud is attributable to the petitioner in the original action. (8)

**SEC. 2.9. Relief available.** — The judgment of annulment may include the award of damages, attorney's fees and other relief.

**If the questioned judgment or final order or resolution had already been executed, the court may issue such orders of restitution or other relief as justice and equity may warrant under the circumstances. (9)**

**SEC. 2.10. Annulment of judgments or final orders of Municipal Trial Courts.** — An action to annul a judgment or final order of a Municipal Trial Court shall be filed in the Regional Trial Court having jurisdiction over the

former. **One (1) copy of the petition shall be filed.** It shall be treated as an ordinary civil action and sections 2, 3, 4, 7, 8 and 9 of this Rule shall be applicable thereto. (10a)

### Rule 3

#### PRELIMINARY CONFERENCE (R48)

**SECTION 3.1.** *Preliminary conference.* — At any time during the pendency of a case, the court may call the parties and their counsel to a preliminary conference.

- (a) To consider the possibility of an amicable settlement, except when the case is not allowed by law to be compromised;
- (b) To define, simplify and clarify the issues for determination;
- (c) To formulate stipulations of facts and admissions of documentary exhibits, limit the number of witnesses to be presented in cases falling within the original jurisdiction of the court, or those within its appellate jurisdiction where a motion for new trial is granted on the ground of newly discovered evidence; and
- (d) To take up such other matters which may aid the court in the prompt disposition of the case. (1)

**SEC. 3.2.** *Record of the conference.* — The proceedings at such conference shall be recorded and, upon the conclusion thereof, a resolution shall be issued embodying all the actions taken therein, the stipulations and admissions made, and the issues defined. (2)

**SEC. 3.3.** *Binding effect of the results of the conference.* — Subject to such modifications which may be made to prevent manifest injustice, the resolution in the preceding section shall control the subsequent proceedings in the case unless, within five (5) days from notice thereof, any party shall satisfactorily show valid cause why the same should not be followed. (3)

## Rule 4

### ORAL ARGUMENTS (R49)

**SECTION 4.1.** *When allowed.* — At its own instance or upon motion of a party, the court may hear the parties in oral argument on the merits of a case, or on any material incident in connection therewith.

**The oral argument shall be limited to such matters as the court may specify in its order of resolution. (1)**

**SEC. 4.2.** *Conduct of oral argument.* — Unless authorized by the court, only one counsel may argue for a party. The duration allowed for each party, the sequence of the argumentation, and all other related matters shall be as directed by the court. (2)

**SEC. 4.3.** *No hearing or oral argument for motions.* — Motions shall not be set for hearing and, unless the court otherwise directs, no hearing or oral argument shall be allowed in support thereof. The adverse party may file objections to the motion within five (5) days from service, upon the expiration of which such motion shall be deemed submitted for resolution. (3)

## Rule 5

### DISMISSAL OF APPEAL (R50)

**SECTION 5.1.** *Grounds for dismissal of appeal.* — **In addition to the grounds stated in Title VIII, Rule 2, Section 12 and Title VIII, Rule 3, Section 12,** an appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

- (a) Unauthorized alterations, omissions or additions in the record on appeal.
- (b) Failure of the appellant to take the necessary steps for the correction or completion of the record within the time limited by the court in its order;
- (c) Failure of the appellant to appear at the preliminary conference under **Title IX, Rule 3** or to comply with orders, circulars, or directives of the court without

justifiable cause; and

- (d) **Any other ground which makes the appeal improper.**
- (1a)

**SEC. 5.2. Dismissal of improper appeal to the Court of Appeals.** - An appeal **erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright.**

(2a)

**SEC. 5.3. Withdrawal of appeal.** — An appeal may be withdrawn as of right at any time before the filing of the appellee's brief. Thereafter, the withdrawal may be allowed in the discretion of the court. (3)

## Rule 6

### JUDGMENTS (R51)

**SECTION 6.1. When case deemed submitted for judgment.** — A case shall be deemed submitted for judgment:

- A. In ordinary appeals. —

- 1. Where no hearing on the merits of the main case is held, upon the filing of the last pleading, brief, or memorandum required by the Rules or by the court itself, or the expiration of the period for its filing.
- 2. Where such a hearing is held, upon its termination or upon the filing of the last pleading or memorandum as may be required or permitted to be filed by the court, or the expiration of the period for its filing.

- B. In original actions and petitions for review. —

- 1. Where no comment is filed, upon the expiration of the period to comment.
- 2. Where no hearing is held, upon the filing of the last pleading required or permitted to be filed by the court, or the expiration of the period for its filing.

3. Where a hearing on the merits of the main case is held, upon its termination or upon the filing of the last pleading or memorandum as may be required or permitted to be filed by the court, or the expiration of the period for its filing. (1)

**SEC. 6.2. *By whom rendered.*** — The judgment shall be rendered by the members of the court who participated in the deliberation on the merits of the case before its assignment to a member for the writing of the decision. (2)

**SEC. 6.3. *Quorum and voting in the court.*** — The participation of all three Justices of a division shall be necessary at the deliberation and the unanimous vote of the three Justices shall be required for the pronouncement of a judgment or final resolution. If the three Justices do not reach a unanimous vote, the clerk shall enter the votes of the dissenting Justices in the record. Thereafter, the Chairman of the division shall refer the case, together with the minutes of the deliberation, to the Presiding Justice who shall designate two Justices chosen by raffle from among all the other members of the court to sit temporarily with them, forming a special division of five Justices. The participation of all the five members of the special division shall be necessary for the deliberation required in Section 2 of this Rule and the concurrence of a majority of such division shall be required for the pronouncement of a judgment or final resolution. (3)

**SEC. 6.4. *Disposition of a case.*** — The Court of Appeals, in the exercise of its appellate jurisdiction, may affirm, reverse, or modify the judgment or final order appealed from, and may direct a new trial or further proceedings to be had. (4)

**SEC. 6.5. *Form of decision.*** — Every decision or final resolution of the court in appealed cases shall clearly and distinctly state the findings of fact and the conclusions of law on which it is based, which may be contained in the decision or final resolution itself, or adopted from those set forth in the decision, order, or resolution appealed from. (5)

**SEC. 6.6. *Harmless error.*** — No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the trial court or by any of the parties is ground for granting a new trial or for setting aside, modifying, or otherwise

disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect which does not affect the substantial rights of the parties. (6)

**SEC. 6.7. *Judgment where there are several parties.*** — In all actions or proceedings, an appealed judgment may be affirmed as to some of the appellants, and reversed as to others, and the case shall thereafter be proceeded with, so far as necessary, as if separate actions had been begun and prosecuted; and execution of the judgment of affirmance may be had accordingly, and costs may be adjudged in such cases, as the court shall deem proper. (7)

**SEC. 6.8. *Questions that may be decided.*** — No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors. (8)

**SEC. 6.9. *Promulgation and notice of judgment.*** — After the judgment or final resolution and dissenting or separate opinions, if any, are signed by the Justices taking part, they shall be delivered for filing to the clerk who shall indicate thereon the date of promulgation and cause true copies thereof to be served upon the parties or their counsel. (9)

**SEC. 6.10. *Entry of judgments and final resolutions.*** — If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final resolution shall forthwith be entered by the clerk in the book of entries of judgments. The date when the judgment or final resolution becomes executory shall be deemed as the date of its entry. The record shall contain the dispositive part of the judgment or final resolution and shall be signed by the clerk, with a certificate that such judgment or final resolution has become final and executory. (10)

**SEC. 6.11. *Execution of judgment.*** — Except where the judgment or final order or resolution, or a portion thereof, is ordered to be immediately executory, the motion for its execution may only be filed in the proper court after its entry.

In original actions in the Court of Appeals, its writ of execution shall

be accompanied by a certified true copy of the entry of judgment or final resolution and addressed to any appropriate officer for its enforcement.

**In appealed cases, where the motion for execution pending appeal is filed in the Court of Appeals at a time that it is in possession of the original record or the record on appeal, the resolution granting such motion shall be transmitted to the lower court from which the case originated, together with a certified true copy of the judgment or final order to be executed, with a directive for such court of origin to issue the proper writ for its enforcement. (11)**

## **Rule 7**

### **MOTION FOR RECONSIDERATION (R52)**

**SECTION 7.1. Period for filing.** — A party may file a motion for reconsideration of a judgment or final resolution within fifteen (15) days from notice thereof, with proof of service on the adverse party. (1)

**SEC. 7.2. Second motion for reconsideration.** — No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained. (2)

**SEC. 7.3. Resolution of motion.** — In the Court of Appeals, a motion for reconsideration shall be resolved within ninety (90) days from the date when the court declares it submitted for resolution. (3)

**SEC. 7.4. Stay of execution.** — The pendency of a motion for reconsideration filed on time and by the proper party shall stay the execution of the judgment or final resolution sought to be reconsidered unless the court, for good reasons, shall otherwise direct. (4)

## **Rule 8**

### **NEW TRIAL (R53)**

**SECTION 8.1. Period for filing; ground.** — At any time after the appeal from the lower court has been perfected and before the Court of Appeals loses jurisdiction over the case, a party may file a motion for a new trial on the ground of newly discovered evidence which could not have been

discovered prior to the trial in the court below by the exercise of due diligence and which is of such a character as would probably change the result. The motion shall be accompanied by affidavits showing the facts constituting the grounds therefor and the newly discovered evidence. (1)

**SEC. 8.2. *Hearing and order.*** — The Court of Appeals shall consider the new evidence together with that adduced at the trial below, and may grant or refuse a new trial, or may make such order, with notice to both parties, as to the taking of further testimony, either orally in court, or by depositions, or render such other judgment as ought to be rendered upon such terms as it may deem just. (2)

**SEC. 8.3. *Resolution of motion.*** — In the Court of Appeals, a motion for new trial shall be resolved within ninety (90) days from the date when the court declares it submitted for resolution. (3)

**SEC. 8.4. *Procedure in new trial.*** — Unless the court otherwise directs, the procedure in the new trial shall be the same as that granted by a Regional Trial Court. (4)

## **Rule 9**

### **INTERNAL BUSINESS (R54)**

**SECTION 9.1. *Distribution of cases among divisions.*** — All the cases of the Court of Appeals shall be allotted among the different divisions thereof for hearing and decision. The Court of Appeals, sitting *en banc*, shall make proper orders or rules to govern the allotment of cases among the different divisions, the constitution of such divisions, the regular rotation of Justices among them, the filing of vacancies occurring therein, and other matters relating to the business of the court; and such rules shall continue in force until repealed or altered by it or by the Supreme Court. (1)

**SEC. 9.2. *Quorum of the court.*** — A majority of the actual members of the court shall constitute a quorum for its sessions *en banc*. Three members shall constitute a quorum for the sessions of a division. The affirmative votes of the majority of the members present shall be necessary to pass a resolution of the court *en banc*. The affirmative votes of three members of a division shall be necessary for the pronouncement of a judgment or final resolution, which shall be reached in consultation before

the writing of the opinion by any member of the division. (2)

## **RULE 10 (R55)**

### **PUBLICATION OF JUDGMENTS AND FINAL RESOLUTIONS**

**SECTION 10.1.** *Publication.* — The judgments and final resolutions of the court shall be published in the Official Gazette and in the Reports officially authorized by the court in the language in which they have been originally written, together with the syllabi therefor prepared by the reporter in consultation with the writers thereof. Memoranda of all other judgments and final resolutions not so published shall be made by the reporter and published in the Official Gazette and the authorized reports. (1)

**SEC. 10.2.** *Preparation of opinions for publication.* — The reporter shall prepare and publish with each reported judgment and final resolution a concise synopsis of the facts necessary for a clear understanding of the case, the names of counsel, the material and controverted points involved, the authorities cited therein, and a syllabus which shall be confined to points of law. (2)

**SEC. 10.3.** *General make-up of volumes.* — The published decisions and final resolutions of the Supreme Court shall be called "Philippine Reports," while those of the Court of Appeals shall be known as the "Court of Appeals Reports." Each volume thereof shall contain a table of the cases reported and the cases cited in the opinions, with a complete alphabetical index of the subject matters of the volume. It shall consist of not less than seven hundred, pages printed upon good paper, well bound and numbered consecutively in the order of the volumes published. (3)

## TITLE XI: PROCEDURE IN THE SUPREME COURT

### Rule 1

#### ORIGINAL AND APPEALED CASES (R56)

##### A. Original Cases

**SECTION 1.1.** *Original cases cognizable.* — Only petitions for certiorari, prohibition, mandamus, quo warranto, habeas corpus, disciplinary proceedings against members of the judiciary and attorneys, and cases affecting ambassadors, other public ministers and consuls may be filed originally in the Supreme Court. (1)

**SEC. 1.2.** *Rules applicable.* — The procedure in original cases for certiorari, prohibition, mandamus, quo warranto and habeas corpus shall be in accordance with the applicable provisions of the Constitution, laws, and **Title IX, Rules 1, 3, 4, 6, 7** and this Rule, subject to the following provisions:

- (a) All references in said Rules to the Court of Appeals shall be understood to also apply to the Supreme Court;
- (b) The portions of said Rules dealing strictly with and specifically intended for appealed cases in the Court of Appeals shall not be applicable; and
- (c) **Five (5)** clearly legible copies of the petition shall be filed, together with proof of service on all adverse parties.

**The proceedings for disciplinary action against members of the judiciary shall be governed by the laws and Rules prescribed therefor, and those against attorneys by Rule 139-B, as amended. (2a)**

##### B.Appealed Cases

**SEC. 1.3.** *Mode of appeal*— An appeal to the Supreme Court may be taken only by a petition for review on certiorari, except in criminal cases where the penalty imposed is *reclusion perpetua* or life imprisonment. (3a)

**SEC. 1.4. *Procedure.*** — The appeal shall be governed by and disposed of in accordance with the applicable provisions of the Constitution, laws, **Title VIII, Rules 6; Title IX, Rule 3, Sections 1, 2, and 5 to 11 of Title IX, Rules 6, 7, and this Rule.** (4a)

**SEC. 1.5. *Grounds for dismissal of appeal.*** — The appeal may be dismissed *motu proprio* or on motion of the respondent on the following grounds:

- (a) Failure to take the appeal within the reglementary period;
- (b) Lack of merit in the petition;
- (c) Failure to pay the requisite docket fee and other lawful fees or to make a deposit for costs;
- (d) Failure to comply with the requirements regarding proof of service and contents of and the documents which should accompany the petition;
- (e) Failure to comply with any circular, directive or order of the Supreme Court without justifiable cause;
- (f) Error in the choice or mode of appeal; and
- (g) The fact that the case is not appealable to the Supreme Court. (5)

**SEC. 1.6. *Disposition of improper appeal.*** — Except as provided in **Rule 124, Section 13** regarding appeals in criminal cases where the penalty imposed is *reclusion perpetua* or life imprisonment **or a lesser penalty**, an appeal taken to the Supreme Court by notice of appeal shall be dismissed.

**An appeal by certiorari taken to the Supreme Court from the Regional Trial Court submitting issues of fact may be referred to the Court of Appeals for decision or appropriate action. The determination of the Supreme Court on whether or not issues of fact are involved shall be final. (6a)**

**SEC. 1.7. *Procedure if opinion is equally divided.*** — Where the court *en banc* is equally divided in opinion, or the necessary majority cannot be had, the case shall again be deliberated on, and if after such deliberation no decision is reached, the original action commenced in the court shall be dismissed; in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be

denied. (7)

## TITLE XII: SPECIAL CIVIL ACTIONS

### Rule 1

#### COMMON PROVISIONS (N)

**SECTION 1.1.** *Requirements for pleadings, motions, and submissions.* — All pleadings, motions, and submissions shall be verified and when proper, shall contain a sworn attestation that all attached legible documents are authentic or true copies of the original. In addition, the initiatory pleadings shall bear a sworn certification against forum shopping. The verification, sworn attestation, and sworn certification against forum shopping shall be jointly accomplished by the parties and their counsels.

The parties' initiatory and responsive pleadings shall contain their respective claims and defenses and shall bear as attachments their supporting documents, if any. Such claims or documents not so pleaded or attached shall be deemed waived.

In no case shall the body of the pleadings, motions, or submissions exceed twenty (20) pages.

**SEC. 1.2.** *Outright dismissal for non-compliance.* — Failure to comply with any of the requirements pertaining to contents, verification, certification against forum shopping, and attestation shall be a cause for outright dismissal of the petition or complaint.

A false verification, attestation, or certification against forum shopping shall also be a cause for outright dismissal of the petition or complaint or striking out of the corresponding pleadings, motions, or submissions, as the case may be. In addition, the erring parties and their counsels shall jointly and severally pay a fine ranging from Fifty Thousand Pesos (₱ 50,000.00) to One Hundred Thousand Pesos (₱ 100,000.00). The court shall determine the amount of fine, considering the circumstances of each case. This shall not bar other administrative, civil, or criminal actions which the court or the prejudiced party or both may file against the erring parties and their counsels.

**SEC. 1.3.** *Inextendible periods.* — All periods prescribed for special civil actions are inextendible, except when the rules provide otherwise.

As officers of the court, the concerned offices, personnel, and persons shall promptly receive, docket, raffle, transmit, or serve all pleadings, submissions, and court issuances to preclude any cause of delay in effecting compliance with the prescribed inextendible periods. This shall also apply to all persons or offices required by the court to comply with its issuances.

Any violation of this provision shall be punished as contempt, without prejudice to the filing of administrative, civil, or criminal action against the erring office or personnel.

**SEC. 1.4. *Prohibited pleadings and motions.*** — Unless the rules provide otherwise, the following pleadings, motions and submissions shall be prohibited:

- (a) Motion to dismiss;
- (b) Motion for extension of time to file pleadings or submissions;
- (c) Dilatory motion for postponement;
- (d) Motion for a bill of particulars;
- (e) Counterclaim or cross-claim;
- (f) Third-party complaint;
- (g) Reply;
- (h) Motion to declare defendant in default;
- (i) Intervention;
- (j) Motion for reconsideration of interlocutory orders or interim relief orders;
- (k) Petition for certiorari, mandamus, or prohibition against any interlocutory order;
- (l) Memorandum; and
- (m) Any other pleadings or submissions intended to delay the summary disposition of the case.

**SEC. 1.5. *Proof of service and payment of fees.*** — Petitions and complaints shall be accompanied by proof of service on the adverse party and proof of payment of docket fees and other lawful fees.

## Rule 2

### INTERPLEADER (R62)

**SECTION 2.1.** *When interpleader is proper.* — Whenever conflicting claims upon the same subject matter are or may be made against persons who claim no interest whatsoever in the subject matter, or an interest which in whole or in part is not disputed by the claimants, they may bring an action against the conflicting claimants to compel them to interplead and litigate their several claims among themselves. (1)

**SEC. 2.2. Order.** — Upon the filing of the complaint, the court shall issue an order requiring the conflicting claimants to interplead with one another. If the interests of justice so require, the court may direct in such order that the subject matter be paid or delivered to the court. (2)

**SEC. 2.3. Summons.** — Summons shall be served upon the conflicting claimants, together with a copy of the complaint and order. (3)

**SEC. 2.4. Answer and other pleadings.** — Each claimant shall file his or her answer setting forth his or her claim within fifteen (15) days from service of the summons upon him, serving a copy thereof upon each of the other conflicting claimants who may file their reply thereto as provided by these Rules. If any claimant fails to plead within the time herein fixed, the court may, on motion, declare him or her in default and thereafter render judgment barring him or her from any claim in respect to the subject matter.

The parties in an interpleader action may file counterclaims, cross-claims, third-party complaints and responsive pleadings thereto, as provided by these Rules. (5a)

**SEC. 2.5. Determination.** — After the pleadings of the conflicting claimants have been filed, and preliminary conference has been conducted in accordance with the Rules, the court shall proceed to determine their respective rights and adjudicate their claims. (6a)

In no case shall the proceedings, from commencement to termination, exceed six (6) months.

**SEC. 2.6. Docket and other lawful fees, costs, and litigation expenses as liens.** — The docket and other lawful fees paid by the party who filed a

complaint under this Rule, as well as the costs and litigation expenses, shall constitute a lien upon the subject matter of the action, unless the court orders otherwise. (7a)

**SEC. 2.7. Mode of appeal.** — The court's decision or final order may be questioned through an appeal in accordance with Title VIII, Rule 2 or Title VII, Rule 3 as the case may be. (n)

## Rule 3

### DECLARATORY RELIEF (R63)

**SECTION 3.1. Who may file petition.** — Persons interested under a deed, will, contract, or other written instrument, whose rights are affected by a statute, executive order, ordinance, government regulation or any similar issuance, before its breach, file a petition in the appropriate Regional Trial Court to determine its construction or validity and their rights or duties under it.

An action for the reformation of an instrument, to quiet title to real property or remove clouds therefrom, or to consolidate ownership under Article 1607 of the Civil Code, may be brought under this Rule. (1a)

**SEC. 3.2. Parties.** — All persons who have or claim any interest which would be affected by the declaration shall be made parties. No declaration shall prejudice the rights of persons not parties to the action, except when the rules provide otherwise. (2)

**SEC. 3.3. Contents of the petition.** — The verified petition shall contain the following:

- (a) the parties' personal circumstances;
- (b) description of the nature and contents of the subject deed, will, contract, or other written instruments, and the subject statute, executive order or regulation, ordinance, or any other government issuance; and
- (c) statement of relevant facts, issues, arguments, supporting authorities, and relief sought. (n)

**SEC. 3.4. Notice on Solicitor General.** — In any action involving the

validity of a statute, executive order or regulation, or any other government issuance, the plaintiff shall serve a copy of the petition on the Solicitor General who shall be heard on the matter. (3a)

**SEC. 3.5. Local government ordinances.** — In any action involving the validity of a local government ordinance, a copy of the petition shall be served on the corresponding prosecutor or legal officer of the local government unit concerned. If such ordinance is alleged to be unconstitutional, a copy of the petition shall also be served on the Solicitor General. The prosecutor, legal officer, or Solicitor General, as the case may be, shall be heard on the matter. (4a)

**SEC. 3.6. Court action discretionary.** — Except in actions falling under the second paragraph of Section of this Rule, the court, *motu proprio* or upon motion, may refuse to exercise the power to declare rights and to construe instruments in any case where a decision would not terminate the uncertainty or controversy which gave rise to the action, or in any case where the declaration or construction is not necessary and proper under the circumstances. (5)

**SEC. 3.7. Order.** — Within ten (10) days from receipt of the petition, the court may dismiss the petition *motu proprio*, should it find the petition frivolous, patently without merit, not within its jurisdiction, or not proper for the exercise of its power to declare rights and to construe instruments where a decision would not terminate the controversy which gave rise to the action or where the declaration or construction is not appropriate under the circumstances. Otherwise, the court shall require the defendants to file their comments on the petition within ten (10) days from notice. (n)

**SEC. 3.8. Determination.** — Within thirty (30) days from receipt of the comments or expiration of the period to file the same, the court may:

- (a) decide the petition based on the pleadings and documents thus filed, should the court find them sufficient for this purpose; or
- (b) conduct a summary hearing, should the court find it necessary for the purpose of resolving the petition.

In no case shall the summary hearing exceed the prescribed 30-day period.

Upon termination of the summary hearing, the court shall have a fresh period of thirty (30) days to decide the petition. (n)

**SEC. 3.9. *Conversion into ordinary action.*** — If before the final termination of the case, a breach of an instrument or by a statute, executive order, ordinance, government regulation or any similar issuance, the action may be converted into an ordinary action and the parties shall be allowed to file such pleadings as may be proper. (6a)

**SEC. 3.10. *Mode of appeal.*** — The court's decision or final order may be questioned through an appeal in accordance with Title VIII, Rule 3. (n)

## Rule 4

### REVIEW OF JUDGMENTS AND FINAL ORDERS OR RESOLUTIONS OF THE COMMISSION ON ELECTIONS AND THE COMMISSION ON AUDIT (R64)

**SECTION 4.1. *Scope.*** — This Rule shall govern the review of judgments and final orders or resolutions of the Commission on Elections and the Commission on Audit. (1)

**SEC. 4.2. *Mode of Review.*** — The aggrieved parties may bring to the Supreme Court on certiorari under Title XI, Rule 5, judgments and final orders or resolutions of the Commission on Elections and the Commission on Audit, except when otherwise provided. (2)

**SEC. 4.3. *Time to file petition.*** — The aggrieved parties shall file the petition within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. If the aggrieved parties file a motion for reconsideration or new trial and the same is eventually denied, they may file the petition within thirty (30) days from notice of its denial. (3a)

**SEC. 4.4. *Form and Contents.*** — The verified petition shall contain:

- (a) the parties' personal circumstances; the Commission concerned shall be impleaded as a party, together with the person or persons interested in sustaining the assailed judgment, final order, or resolution;

- (b) timeliness of the petition; and
- (c) material facts, issues, grounds, arguments, supporting authorities, and relief sought.

The petition shall not replead matters already adequately presented before the defendant Commission. The petition, however, may adopt the same, by reference to the attached documents. (n)

**SEC. 4.5. *Order to comment.*** — If the Supreme Court finds the petition sufficient in form and substance, it shall order the defendants to file their comments on the petition within fifteen (15) days from notice, otherwise, the Court may dismiss the petition outright. The Court may also dismiss the petition if it was filed manifestly for delay or raised questions too unsubstantial to warrant further proceedings.

The comments shall not replead matters already adequately presented before the defendant Commission. The comments, however, may adopt the same, by reference to the attached documents. (6a)

**SEC. 4.6. *Effect of filing.*** — The filing of a petition for *certiorari* shall not stay the execution of the judgment, final order, or resolution sought to be reviewed, unless the Supreme Court directs otherwise. (8a)

**SEC. 4.7. *Submission for decision.*** — Unless the Court sets the case for oral argument, or requires the parties to submit memoranda, the case shall be deemed submitted for decision upon the filing of the comments on the petition, or of such other pleadings or papers as may be required or allowed, or the expiration of the period to do so. (9)

## Rule 5

### **CERTIORARI, PROHIBITION, AND MANDAMUS (R65)**

**SECTION 5.1. *Petition for certiorari.*** — When any tribunal, board, or officer, exercising judicial or quasi-judicial functions, has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any other plain, speedy, and adequate remedy in the ordinary course of law, an aggrieved party may file a verified petition in the proper court to annul or modify the proceedings of such tribunal, board, or officer, and grant other appropriate

relief. (1a)

**SEC. 5.2. *Petition for prohibition.*** — When the proceedings of any tribunal, corporation, board, officer, or person, whether exercising judicial, quasi-judicial, or ministerial functions, are without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any other plain, speedy, and adequate remedy in the ordinary course of law, an aggrieved party may file a verified petition with the proper court to command the defendant to desist from further proceeding with the specified action or matter, and grant other appropriate relief. (2a)

**SEC. 5.3. *Petition for mandamus.*** — When any tribunal, corporation, board, officer, or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other person is entitled, and there is no other plain, speedy, and adequate remedy in the ordinary course of law, the aggrieved party may file a verified petition with the proper court to command the defendant, immediately or at some other time specified by the court, to do the act required to be done and to pay damages arising from the defendant's wrongful acts. (3a)

**SEC. 5.4. *When and where to file the petition.*** — Petitions for certiorari and prohibition shall be filed not later than thirty (30) days from notice of the judgment, order, or resolution. If the aggrieved party has filed a motion for reconsideration or new trial and the same is eventually denied, the petition shall be filed within thirty (30) days from notice of such denial.

A petition for mandamus shall be filed before the required act is performed.

If the petition relates to an act or omission of the Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, or Municipal Circuit Trial Court, tribunal, corporation, board, officer, or person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed with the Court of Appeals whether or not in the exercise of its original or appellate jurisdiction, or Sandiganbayan, if it is in aid of its appellate jurisdiction. If the petition involves an act or omission of a quasi-judicial agency, the

petition shall be filed exclusively with the Court of Appeals, unless the rules provide otherwise.

In election cases involving an act or omission of the Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, Municipal Circuit Trial Court, or Regional Trial Court, the petition shall be filed exclusively with the Commission on Elections, in aid of its appellate jurisdiction. (4a)

**SEC. 5.5. Defendants and costs in certain cases.** — When the petition relates to an act or omission of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer, or person, the petition shall implead, together with the public defendants, the persons interested in sustaining the *questioned* proceedings. These parties shall be called the “private defendants.” It shall be their duty to appear and defend the assailed act or omission, in their own behalf and in behalf of the public defendants.

Unless the court directs otherwise, the public defendants shall not appear or participate in the proceedings. If the case is elevated to a higher court by either party, the public defendants shall be included as nominal parties.

The costs awarded to the plaintiffs shall be against the private defendants only. (5a)

**SEC. 5.6. Form and contents of the petition.** — Verified petitions for certiorari, prohibition, or mandamus shall contain the following:

- (a) the parties’ personal circumstances;
- (b) timeliness of the petition; and
- (c) statement of relevant facts, issues, arguments, supporting authorities, and relief sought.

The petition shall not replead matters already adequately presented in the proceedings before the public defendant. The petition, however, may adopt the same by reference to the attached documents. (n)

**SEC. 5.7. Order.** — Within ten (10) days from receipt of the petition, the court may:

- (a) dismiss the petition, should it find the petition frivolous

or patently without merit; or

- (b) require the private defendants to file their comments, should it find the petition sufficient in form and substance.

The comments shall not replead matters already adequately presented before the public defendant. The comments, however, may adopt the same, by reference to the attached documents. (n)

**SEC. 5.8. *Injunctive relief.*** — The parties may pray, in the petition itself, comment, or separate motion, for a temporary restraining order or writ of preliminary injunction for the preservation of their rights during the pendency of the case.

The prayer for temporary restraining order shall be resolved, without deferment, within five (5) days from receipt of the corresponding pleading or motion except when a shorter period is required by the circumstances.

If a temporary restraining order has been previously issued, the prayer for writ of preliminary injunction shall be resolved, without deferment, at least five (5) days before the temporary restraining order expires, provided the defendants have filed their comments or the period for filing them has expired, or the summary hearing has terminated, as the case may be.

If a temporary restraining order has not been previously issued, the prayer for the writ of preliminary injunction shall nonetheless be resolved, without deferment, within ten (10) days from receipt of the defendants' comments or from expiration of the period to file them, or from termination of the summary hearing, as the case may be. (7a)

**SEC. 5.9. *Effect of filing of petition.*** — The petition shall not interrupt the course of the principal case, absent any injunctive relief issued by the higher court enjoining the public defendant from further proceeding with the case. Failure by the public defendant to proceed with the principal case is a ground for administrative sanction. (7a)

**SEC. 5.10. *Determination.*** — Within thirty (30) days from receipt of the comments or expiration of the period to file the same, the court may:

- (a) decide the petition based on the pleadings and documents thus filed, should the court find them sufficient for this

purpose; or

- (b) conduct a summary hearing or require simultaneous memoranda, or both, should the court find it necessary for the purpose of deciding the petition.

In no case shall the summary hearing and the filing of the memoranda exceed the prescribed thirty-day period.

Upon termination of the summary hearing or receipt of the memoranda or expiration of the period to file the same, the court shall have a fresh period of thirty (30) days to decide the petition. (n)

**SEC. 5.11. *Service and enforcement of order or judgment.*** — A certified copy of the judgment rendered in accordance with the last preceding section shall be served upon the court, quasi-judicial agency, tribunal, corporation, board, officer, or person concerned in such manner as the court may direct, and disobedience thereto shall be punished as contempt. An execution may issue for any damages or costs awarded in accordance with the rules on execution. (9)

**SEC. 5.12. *Disciplinary measures.*** — Should the court find the petition to be patently without merit or prosecuted manifestly for delay or if the questions raised are too unsubstantial to require consideration, the court may award in favor of the defendants treble costs solidarily against the plaintiffs and their counsel. In addition, the plaintiffs' counsel may be subject to administrative sanctions under Rules 139 and 139-B of the Rules of Court and the Code of Professional Responsibility.

The court may impose *motu proprio*, based on *res ipsa loquitur*, other disciplinary sanctions or measures on erring counsel for patently dilatory and unmeritorious petitions for certiorari, prohibition, or mandamus. (n)

**SEC. 5.13. *Mode of appeal.*** — The decision or final order of the Regional Trial Court, Court of Appeals, or Sandiganbayan may be questioned through an appeal in accordance with Rules 3 or 6 of Title VIII, as the case may be. (n)

## Rule 6

### QUO WARRANTO (R66)

**SECTION 6.1. *Action by Government against individuals.*** — An

action for usurpation of a public office or franchise should be brought in the name of the Republic of the Philippines through a verified petition against:

- (a) **persons** who **usurp**, intrude into, or unlawfully hold a public office or franchise;
- (b) public officers who perform or suffer an act which constitutes a ground for forfeiture of office; or
- (c) **an** association which acts as a corporation **within the Philippines without lawful authority.** (1a)

**SEC. 6.2. When Solicitor General or public prosecutor shall commence action.** — The Solicitor General or public prosecutor shall commence an action when directed by the President of the Philippines or when there is sufficient basis that a person or association is performing or suffering any of the acts enumerated in the preceding section. (2a)

**SEC. 6.3. When individuals may commence an action.** — Persons claiming to be entitled to a public office alleged to have been usurped or unlawfully held by another may file a verified petition, in their own name, without prejudice to the filing of the petition by the Solicitor General or public prosecutor, in which case, the petitions shall be consolidated. (5a)

**SEC. 6.4. Parties and contents of petition against usurpation.** — When the action is against a person charged with usurping a public office or franchise, the petition shall contain:

- (a) if commenced by the Solicitor General or public prosecutor, the name of the alleged usurper and the party entitled to the disputed public office or franchise;
- (b) if commenced by private parties, the items under paragraph (a), and in addition, the parties' personal circumstances and the basis for their claim or asserted right;
- (c) description of the disputed public office or franchise;
- (d) timeliness of the petition; and
- (e) statement of material facts, issues, arguments, supporting authorities, and relief sought.

All persons claiming to be entitled to the public office or franchise

may be made parties, and their respective rights to such public office or franchise which may be determined in the same action. (6a)

**SEC. 6.5. *Venue.*** — Actions for *quo warranto* may be brought in the Supreme Court, Court of Appeals, or Regional Trial Court exercising jurisdiction over the territorial area where the defendant or any of them reside.

When the Solicitor General commences the action, it may be brought before the Regional Trial Court in the City of Manila, Court of Appeals, or Supreme Court. (7a)

**SEC. 6.6. *Order.*** — Within ten (10) days from the filing of the petition, the court may:

- (a) dismiss the petition, should it find the petition frivolous or patently without merit; or
- (b) require the defendants to file their comments, should it find the petition sufficient in form and substance.

The defendants shall have fifteen (15) days from notice to file their comments. (n)

**SEC. 6.7. *Notice to Solicitor General.*** — In petitions for Quo Warranto commenced by private individuals, the Solicitor General shall have the right to be notified and heard on the matter. For this purpose, the plaintiff shall furnish a copy of the petition to the Solicitor General. (n)

**SEC. 6.8. *Determination.*** — Within thirty (30) days from receipt of the comments or expiration of the period to file the same, the court may:

- (a) decide the petition based on the pleadings and documents thus filed, should the court find them sufficient for this purpose;
- (b) conduct a summary hearing, should the court find it necessary for the purpose of deciding the petition.

In no case shall the summary hearing exceed the prescribed thirty-day period.

Upon the termination of the summary hearing, the court shall have a

fresh period of thirty (30) days to decide the petition. (n)

**SEC. 6.9. Judgment where there is usurpation.** — When the defendants are found guilty of usurping, intruding into, or unlawfully holding a public office or franchise, judgment shall be rendered directing the ouster of the defendants and the recovery of costs. (9a)

**SEC. 6.10. Rights of persons adjudged entitled to public office; delivery of books and papers; damages.** — If judgment is rendered in favor of persons entitled to the disputed public office, they may, after taking their oath of office and posting the bond required by law, take upon themselves the execution of the office and immediately demand of the defendants all the books and papers in the defendants' custody or control pertaining to the office. If the defendants refuse or neglect to comply, they shall be punished for contempt. Persons adjudged entitled to the office may also sue the defendants for damages sustained by reason of the usurpation. (10a)

**SEC. 6.11. Limitations.** — Actions for *quo warranto* shall be brought within one (1) year from the time the cause for the ouster or the right of the plaintiffs to hold the disputed public office arose. An action for damages shall be commenced within one (1) year from the time plaintiff's right to the office is determined with finality. (11a)

**SEC. 6.12. Judgment for costs.** — In an action brought in accordance with the provisions of this Rule, the court may render judgment for costs against either the plaintiff, the relator, or the defendant, or the person or persons claiming to be a corporation, or may apportion the costs, as justice requires. (12)

**SEC. 6.13. Mode of appeal.** — The decision or final order may be questioned through an appeal in accordance with Rules 3 or 6 of Title VIII as the case may be. (n)

## Rule 7

### EXPROPRIATION (R67)

**SECTION 7.1. The complaint.** — The right of eminent domain shall be exercised by the filing of a verified complaint which shall state the right and purpose of expropriation, describe the real or personal property sought

to be expropriated, the value based on the current zonal valuation of the property as certified by the Bureau of Internal Revenue, and join as defendants all persons owning or claiming to own, or occupying, any part thereof or interest therein, showing, so far as practicable, the separate interest of each defendant. The complaint shall be accompanied by a Certificate of Availability of Funds issued by the expropriating agency concerned, if the plaintiff is the government. If the property is owned by the Republic of the Philippines, although occupied by private individuals, or if the title is otherwise doubtful so that the plaintiff cannot with accuracy specify the real owners, the complaint shall so state.

Within five (5) days from raffle in multi-sala courts or filing in single-sala courts, of the complaint, the court shall dismiss the complaint should it lack the requisite certificate of availability of funds. (1a)

**SEC. 7.2. *Entry of plaintiff upon property.*** — The following procedure shall be observed in resolving the prayer for the writ of possession:

- (a) Within five (5) days from the filing of the complaint, the plaintiff, shall, for the purpose of taking possession of the property, deposit with an authorized government depository, the cash amount equivalent to one hundred percent (100%) of the value of the property based on the current zonal valuation of the Bureau of Internal Revenue (BIR); and the value of the improvements as determined under Section 7 of Republic Act No. 8974.
- (b) If the property does not have a current BIR zonal valuation, the court shall order the BIR in the area concerned to issue the current zonal valuation of the property within fifteen (15) days from receipt of the order. Upon receipt of the BIR current zonal valuation or not later than five (5) days, the court shall require plaintiff to deposit the required amount in compliance with this section. The deposit shall be made within five (5) days from notice.
- (c) Upon service of summons upon defendant, the court shall have fifteen (15) days to issue an order for initial hearing

on the prayer for writ of possession and immediate payment to defendant. The court, in the same order, shall also direct the Registrar of Deeds to immediately annotate, not later than three (3) days from receipt of the order, a notice of pendency of the action on the affected titles under pain of contempt.

- (d) During the hearing on the prayer for writ of possession and immediate payment to the defendant, the court shall require the defendant to present proof of ownership. For this purpose, the hearing shall not exceed seven (7) days.
- (e) If the court is satisfied with the proof of ownership presented during the hearing, it shall issue the writ of possession within five (5) days from termination of the hearing and shall order the release of the deposited amount to defendant. Should the defendant fail to submit the required proof of ownership, the court, upon plaintiff's motion, shall issue the writ of possession but shall withhold the release of the amount deposited pending defendant's compliance.
- (f) The authorized government depository shall release the amount to the landowner within three (3) days from receipt of the order, under pain of contempt.
- (g) Should there be any controversy as to the ownership of the property or the owner is unknown, plaintiff shall deposit the amount with the court. The court shall order plaintiff to cause the publication of the complaint for two consecutive weeks in a newspaper of general circulation. Upon plaintiff's compliance, the court shall, upon motion, issue the writ of possession within five (5) days from filing of the motion.
- (h) Within five (5) days from issuance of the Order, the court shall direct the sheriff, to forthwith place the plaintiff in possession of the property and promptly submit a report to the court with service of copies to the parties. The sheriff's compliance shall be submitted not later than ten (10) days from issuance of the order.(n)

**SEC. 7.3. *Answer; trial.*** — The answer shall be filed within fifteen

(15) days from service of summons. It shall identify the subject property in which defendant claims to have an interest, state the interest claimed, and the defenses.

A defendant waives all defenses and objections not so alleged but the court, in the interest of justice, may permit amendments to the answer to be made not later than ten (10) days from its filing. However, at the trial of the issue of just compensation whether a defendant has previously appeared or answered, defendant may present evidence as to the amount of the compensation to be paid for the property, and may share in the distribution of the award.

A defendant who has no objection to the taking of the property may file a manifestation to that effect within the period stated in the summons. Thereafter, the defendant shall be entitled to notice of all proceedings.

In no case shall the trial for the order of expropriation exceed fifteen (15) days from filing of the answer or from the expiration of the date for its filing. (n)

**SEC. 7.4. *Order of expropriation.*** — If the defenses against the right of the plaintiff to expropriate the property are overruled, or when no party opposes them, the court shall issue an order of expropriation within five (5) days from the filing of the answer or from termination of the trial.

The order shall state that the plaintiff has a lawful right to take the property for the public purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint, whichever comes first.

A party aggrieved by the final order sustaining the right to expropriate the property may file an appeal in accordance with Title VIII, Rule 3 which shall not stay the issuance of a writ of possession or prevent the court from determining the just compensation to be paid.

**After the issuance of the order of expropriation and the writ of possession,** the plaintiff shall not be permitted to move for the dismissal or withdrawal of the complaint except on such terms as the court deems just and equitable. **The dismissal and withdrawal of the case by plaintiff without just cause, as determined by the court, shall subject the plaintiff to contempt and damages, without prejudice to other appropriate**

**actions or sanctions. The court shall conduct a summary hearing on such matters of contempt and damages and render a ruling thereon within twenty (20) days from notice of dismissal or discontinuance. (4a)**

**SEC. 7.5. *Constitution of the Board of Commissioners.*** — Within five (5) days from the issuance of the order of expropriation, the court shall direct each party to submit the names of at least three (3) willing competent and independent nominees. Within ten (10) days from receipt of the lists of nominees, the court shall choose one from each list and shall designate its own competent and independent representative as Chairperson. All objections shall be filed and resolved within ten (10) days from the issuance of the order naming the three (3) nominees.

Thereafter, the court shall appoint the Commissioners who shall take their oath within three (3) days from issuance of their appointments. (n)

**SEC. 7.6. *Proceedings by commissioners.*** — The parties shall present evidence of the fair market value of the property before the commissioners. After due notice, the commissioners may conduct ocular inspection of the property and its surroundings.

The commissioners shall assess the consequential damages to the property not taken and deduct from such consequential damages the consequential benefits to be derived by the owner from the public purpose of the property taken. The consequential benefits assessed shall not exceed the consequential damages assessed.

The commissioners shall determine the just compensation for the expropriated property applying the guidelines provided by law. (6a)

**SEC. 7.7. *Report by commissioners and payment of commissioners' fees.*** — The commissioners shall submit their report to the court within sixty (60) days from their oath. The branch clerk of the court shall serve copies of the report on all interested parties, within five (5) days from its submission. The parties may comment within ten (10) days from receipt of the report.

Within five (5) days from receipt of the report, the court shall order the plaintiff to pay the commissioners reasonable fees. The plaintiff shall comply within ten (10) days from notice.

Failure of the commissioners to file the report within the prescribed

period shall be considered contempt of court. (7a)

**SEC. 7.8. *Action upon commissioners' report.*** — Within 30 days from receipt of the commissioner's report, the court may conduct a summary hearing thereon or deem the issue of just compensation submitted for decision. In no case shall the summary hearing exceed the prescribed thirty (30) day period.

After the termination of the summary hearing or the submission of the case for decision, the Court shall have sixty (60) days to resolve the issue of just compensation. In rendering its judgment, the court may adopt, modify, or reject the commissioners' report or any part of it. (8)

**SEC. 7.9. *Uncertain ownership; conflicting claims.*** — If the ownership of the property taken is uncertain, or there are conflicting claims to any part thereof, the court may order any sum or sums awarded as compensation for the property to be paid to the court for the benefit of the person adjudged in the same proceeding to be entitled thereto. But the judgment shall require the payment of the sum or sums awarded to either the defendant or the court before the plaintiff can enter upon the property, or retain it for the public use or purpose if entry has already been made. (9)

**SEC. 7.10. *Rights of plaintiff after judgment and payment.*** — Upon payment by the plaintiff to the defendant of the compensation fixed by the judgment, with legal interest thereon from the taking of the possession of the property, or after tender to defendant of the amount so fixed and payment of the costs, the plaintiff shall have the right to enter upon the property expropriated and to appropriate it for the public use or purpose defined in the judgment, or to retain it should he or she have taken immediate possession thereof under the provisions of Section hereof. If the defendant and counsel absent themselves from the court, or decline to receive the amount tendered, the same shall be ordered to be deposited in court and such deposit shall have the same effect as actual payment to defendant or person ultimately adjudged entitled thereto. (10)

**SEC. 7.11. *Entry not affected by appeal; effect of reversal upon petition.*** — The right of the plaintiff to enter upon the property of the defendant and appropriate the same for public use or purpose shall not be affected by the filing of a petition for review from the judgment.

But if the appellate court determines that plaintiff has no right of expropriation, judgment shall be rendered ordering the Regional Trial Court to forthwith enforce the restoration to the defendant of the possession of the property, and to determine the damages which the defendant sustained and may recover by reason of the possession taken by the plaintiff. (11a)

**SEC. 7.12. *Costs, by whom paid.*** — The fees of the commissioners shall be taxed as a part of the costs of the proceedings. All costs, except those of rival claimants litigating their claims, shall be paid by the plaintiff, unless an appeal is taken by the owner of the property and the judgment is affirmed, in which event the costs of the appeal shall be paid by the owner. (12)

**SEC. 7.13. *Recording judgment, and its effect.*** — The judgment entered in expropriation proceedings shall state definitely, by an adequate description, the particular property or interest therein expropriated, and the nature of the public use or purpose for which it is expropriated. When real estate is expropriated, a certified copy of such judgment shall be recorded in the registry of deeds of the place in which the property is situated, and its effect shall be to vest in the plaintiff the title to the real estate so described for such public use or purpose. (13)

**SEC. 7.14. *Power of guardian in such proceedings.*** — The guardian or guardian *ad litem* of minors or of persons judicially declared to be incompetent may, with the approval of the court, do and perform on behalf of said wards any act, matter, or thing respecting the expropriation for public use or purpose of the property belonging to said wards, which the latter could do in such proceedings if they were of age or competent. (14)

**SEC. 7.15. *Mode of Appeal.*** — The decision or final order fixing the amount of just compensation may be questioned through an appeal in accordance with Title VIII, Rule 3. (n)

## Rule 8

### JUDICIAL AND EXTRA-JUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE (R68)

#### A. Judicial Foreclosure

**SECTION 8.1. *Complaint in action for foreclosure.*** — In an action for the foreclosure of a mortgage or other encumbrance upon a real estate, the complaint shall contain:

- (a) the parties' personal circumstances;
- (b) **statement of relevant facts such as** the date and due execution of the mortgage; its assignments, if any; the names and residences of the mortgagor and the mortgagee; a description and **location** of the mortgaged property; **the date of the promissory note** or other documentary evidence of the obligation secured by the mortgage; the **unpaid** amount; and, the names and residences of all persons having or claiming an interest in the property subordinate in right to that of the mortgagee, all of whom shall be made defendants in the action. (1a)

**SEC. 8.2. *Judgment on foreclosure.*** — Within thirty (30) days from filing of the answer of the defendant or any junior encumbrancer, the court, *motu proprio*, after examination of the plaintiff's claims and defendant's defenses, as well as the parties' respective pleadings, may render judgment directing the defendant to pay the plaintiff mortgage debt, including interest, charges, and costs.

Where material issues exist, the court shall set the case for summary hearing within thirty (30) days from filing of the answer and proceed to render judgment within a similar period of thirty (30) days from the last hearing. (2a)

**SEC. 8.3. *Equity of redemption.*** — If the judgment is in favor of the plaintiff, the defendant shall pay the mortgage debt due to the plaintiff as ascertained by the court within one hundred twenty (120) days from entry of judgment and in case of default thereof, the mortgaged property shall be sold at public auction to satisfy the judgment. (n)

**SEC. 8.4. *Sale of the mortgaged property; effect.*** — The sale of the mortgaged property shall be governed by the rules on execution and other regulations governing sales of real estate under execution. Such sale shall not affect the rights of persons holding prior encumbrances upon the property or a part thereof. After the sale, the court, *motu proprio* or on motion, shall issue the order confirming the sale. Within one (1) year from

registration of the order confirming the sale, the rights in the property of all the parties to the action shall be divested and their rights shall vest in favor of the purchaser at the auction sale. (3a)

**SEC. 8.5. *Disposition of proceeds of sale.* — The amount realized from the foreclosure sale** shall first be applied against the mortgage debt, interest, charges and other costs and then, to the claims of the junior encumbrancers in the order of their priority as ascertained by the court. The excess, if any, shall be paid to the mortgagor. (4a)

**SEC. 8.6. *How sale to proceed in case the debt is not all due.* —** If the debt for which the mortgage or encumbrance was held is not at all due as provided in the judgment, the sale shall cover only sufficient portion of the property as may be necessary to cover the amount due to the plaintiff. But if the property cannot be sold in portions without prejudice to the parties, the whole shall be ordered to be sold in the first instance, and the entire mortgage debt shall be deemed paid, if the proceeds of the sale be sufficient therefor, there being a rebate of interest where such rebate is proper. (5)

**SEC. 8.7. *Deficiency judgment.* — If upon the sale of the mortgaged property as provided in the next preceding section,** the proceeds of the sale are not sufficient to satisfy the amount due to the plaintiff, the court, upon motion, shall render judgment within thirty (30) days from comment on the motion, if any, directing the defendant to pay the deficiency, upon which execution may issue immediately if the deficiency is all due at the time of the rendition of the judgment; otherwise, the plaintiff shall be entitled to execution at such time as the remaining balance, becomes due under the terms of the original contract, which time shall be stated in the judgment. (6a)

**SEC. 8.8. *Petition for Review against judgment on judicial foreclosure.* —** The judgment on foreclosure may be appealed in accordance with Title VIII, Rule 3. However, the order of the court confirming the sale is immediately executory and may be registered with the Registry of Deeds of the province or city where the property is situated without prejudice to the right of the defendant to supplement a petition for review already filed to assail the conduct of the foreclosure sale in case of irregularity. (n)

**SEC. 8.9. *Appeal against order confirming sale.* —** An appeal to set aside the order confirming the sale shall include similar valid grounds to set

aside the assailed amount of deficiency judgment, if any. However, an appeal against the order confirming the sale shall not stay the issuance of the new certificate of title and the writ of possession in favor of the purchaser or last redemptioner after one year from registration of the order confirming the sale. (n)

**SEC. 8.10. *Redemption.*** — If no right of redemption is exercised within one year from registration of the order confirming the sale, the certificate of title in the name of the mortgagor shall be canceled and a new one issued in the name of the purchaser or the last redemptioner. The latter shall also be entitled to the possession of the property unless a third person is actually holding the same adversely to the judgment obligor. The purchaser or last redemptioner may secure a writ of possession, upon motion, from the court which ordered the foreclosure.

In the event the property is redeemed, the deed of redemption shall be registered with the registry of deeds, and a brief memorandum thereof shall be made by the register of deeds on said certificate of title. (n)

#### B. Extra-judicial Foreclosure (N)

**SEC. 8.11. *Petition for Writ of Possession under Act 3135 during redemption period.*** — In any sale made under the provisions of Act No. 3135, the purchaser may file a petition with the Regional Trial Court of the province, city, or place where the property or any part thereof is situated, for a writ of possession during the redemption period.

**SEC. 8.12. *Contents of the petition.*** — The petition shall contain the following:

- (a) the plaintiff's personal circumstances;
- (b) statement of relevant proceedings leading to the filing of the petition;
  - 1. statement of the following matters: the plaintiff is the highest bidder in the public auction of the mortgaged property in whose favor a certificate of sale was issued;
  - 2. the plaintiff is willing to post a bond in an amount equivalent to 5% of the current zonal valuation of

the real property and 5% of the assessed value of the improvement, if any, for a period of twelve months, to indemnify the debtor or mortgagor in case it be shown that the sale was made in violation of the mortgage or the requirements of Act 3135; and

3. to the best of the plaintiff's knowledge, there are no third persons actually holding the property adverse to the debtor or mortgagor.
4. relief sought.

**SEC. 8.13. *Summary nature of the proceedings.*** — The petition shall be heard *ex parte* in a summary hearing.

Notice need not be served upon the persons interested in the property but a general notice on the filing of the petition and the date of the summary hearing should be posted on the property or its premises.

Except as provided under Section 14, no pleadings, motions, or submissions filed by any party other than the plaintiff shall be allowed.

**SEC. 8.14. *Ministerial duty of the court.*** — Within ten (10) days from receipt of the petition, the court shall:

- (a) issue an order setting the petition for summary hearing;
- (b) approve the bond posted by the plaintiff upon compliance with Section 1 of this Rule; and
- (c) issue the writ of possession addressed to the branch sheriff who shall immediately execute it within seventy two (72) hours from receipt of the writ.

Notwithstanding any action questioning the mortgage or the extrajudicial foreclosure, the writ of possession shall continue to be effective.

**SEC. 8.15. *Motion to quash the writ of possession.*** — The debtor or mortgagor or any third party actually holding the property adverse to the debtor or mortgagor may, not later than ten (10) days after the purchaser was given possession, file a motion to quash the writ and restore possession to such debtor, mortgagor, or third party on the following grounds:

- (a) the mortgage contract was not violated;
- (b) the sale contravened Act 3135; or
- (c) the third party has a superior right to the possession of the property and its improvements.

The court shall summarily hear and resolve the motion within twenty (20) days from receipt thereof. During the hearing, the movant may present evidence of the damages suffered.

Should the court find merit in the motion to quash, it shall order the cancellation of the writ of possession, the restoration of possession of the property to the movant, and the release to the latter of all or part of the plaintiff's bond.

**SEC. 8.16. Petition for Writ of Possession under Act 3135 after redemption period expired.** — If no redemption is made during the redemption period and where no third party is shown to actually possess the property adverse to the debtor or mortgagor, the issuance of a writ of possession becomes a matter of right for the purchaser. For this purpose, no bond shall be required. The purchaser may cause the annotation of the writ of possession in the certificate of title of the property.

#### C. Common Provision for Judicial and Extra-judicial Foreclosure

**SEC. 8.17. Applicability of other provisions.** — The provisions on Execution, Satisfaction and Effect of Judgments shall be applicable to the judicial and extra-judicial foreclosure of real estate mortgages under this Rule insofar as the former are not inconsistent with or may serve to supplement the provisions of the latter. (n)

## Rule 9

### PARTITION (R69)

#### **SECTION 9.1. Complaint for partition of real or personal property.**

— Persons having the right to compel the partition of real or personal property may file a verified petition against all persons interested in the property. The complaint shall contain the following:

- (a) the parties' personal circumstances;

- (b) statement of the nature and extent of plaintiff's title;
- (c) description of the real or personal property, including the assessed value for real property and estimated value for personal property; and
- (d) narration of relevant facts and relief sought. (n)

**SEC. 9.2. *Partition by commissioners.*** — In case the parties cannot agree on the partition among themselves within thirty (30) days from notice of the order of partition, the court shall direct each party to submit the names of at least three (3) willing, competent, and independent nominees to be appointed as commissioners tasked to make the petition. Within ten (10) days from receipt of the parties' lists of nominees, the court shall choose two (2) from the lists and shall name its own nominee as Chairperson. All objections shall be filed and resolved within ten (10) days from the notice of the order naming the three (3) nominees.

After all the objections shall have been resolved, the court shall appoint the three (3) commissioners who shall take their oath within three (3) days from notice of their appointments. (3 & 4a)

**SEC. 9.3. *Proceedings by commissioners.*** — The commissioners shall:

- (a) conduct an ocular inspection of the real property or examine the personal property, after due notice to the parties;
- (b) hear the parties on their preferred portions of the property and their comparative value;
- (c) determine whether a partition of the property is feasible and will not be prejudicial to the parties;
- (d) partition the property, considering, in the case of real property, the improvements, situation, and quality of its portions, and in the case of personal property, the value and quality of its portions;

The commissioners shall adopt the most equitable manner of partition. (4a)

**SEC. 9.4. *Assignment or sale of property by commissioners.*** —

Should the commissioners determine that a partition of the property is not feasible and will be prejudicial to the parties, the commissioners shall report this to the court in accord with Section 9.5. The court may then order the property to be:

- (a) assigned to one of the parties willing to take the same, provided that this party pays the others their respective shares in such equitable amount, as determined by the commissioners; or
- (b) sold by the commissioners at a public sale, upon motion, with the proceeds to be divided among the parties. (5a)

**SEC. 9.5. Report by commissioners and payment of their fees.** — The commissioners shall **submit their report to the court within sixty (60) days from their oath. The branch clerk of court shall serve copies of the report on all parties, within five (5) days from its submission. The parties may comment within ten (10) days from their receipt of the report.**

**The court shall order the plaintiff to pay the commissioners reasonable fees not later than five (5) days from receipt of the report. The plaintiff shall comply not later than ten (10) days from notice.**

Failure of the commissioners to file the report within the prescribed period shall be punished for contempt of court. (6a)

**SEC. 9.6. Action upon commissioners' report.** — Within thirty (30) days from receipt of the parties' comments on the commissioners' report or from expiration of the period to file them, the court may:

- (a) render judgment on the complaint, should it find the commissioners' report and the comments thus filed already sufficient for this purpose;
- (b) conduct a summary hearing, should the court find it necessary for the purpose of deciding the case.

In no case shall the summary hearing exceed the prescribed 30-day period.

After termination of the summary hearing, the Court shall have thirty (30) days to render its final judgment. In doing so the court may adopt, modify, or reject the commissioners' report or any part of it. (7a)

**SEC. 9.7. *Limitation.*** — The proceeding for petition from commencement to termination shall not exceed six (6) months. (n)

**SEC. 9.8. *Mode of Appeal.*** — The order of partition and the final judgment of partition may be appealed in accordance with Title VIII, Rule 3. (n)

**SEC. 9.9. *Accounting, costs, and expenses.*** — The court shall equitably apportion among the parties the costs and expenses in the action, including the commissioners' fees. The court shall also allow the parties to whom a particular property or portions are assigned to recover their just share of rents and profits thereon from those who received them. (8a and 10a)

**SEC. 9.10. *Power of guardians in partition.*** — The approval of the court is required before a guardian or guardian *ad litem* of a minor or a person judicially declared to be incompetent can act on behalf of the ward in the partition proceedings. (9a)

**SEC. 9.11. *Effects of judgment; copy to be recorded in registry of deeds.*** — A judgment of partition shall have the following effects:

- (a) In case of actual partition, the judgment shall state the particular portion of the property assigned to each party with adequate description of its metes and bounds. The judgment shall vest in the parties the portions of the property assigned to them.
- (b) If the property is assigned to one of the parties after payment of the amount ordered by the court, the judgment shall state the fact of assignment and payment. The judgment shall vest in such party the entire property free from any interest of the other parties.
- (c) If the property is sold and the sale is confirmed by the court, the judgment shall state the name of the purchaser and a definite description of the property or portions sold. The judgment shall vest title over the property in such purchaser free from claims of the parties in the partition.

A certified copy of the judgment shall be recorded in the Registry of Deeds of the place where the subject real property is situated, and the

expenses of such recording shall be assessed as part of the costs. (11a)

**SEC. 9.12.** *Neither paramount rights nor amicable partition affected by this Rule.* — Nothing in this Rule shall prejudice, defeat, or destroy the right or title of any third person claiming the subject property. (12a)

## Rule 10

### FORCIBLE ENTRY AND UNLAWFUL DETAINER (R70)

**SECTION 10.1.** *Who may institute proceedings, and when.* — Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court or Municipal Circuit Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs. (1)

**SEC. 10.2.** *Lessor to proceed against lessee only after demand.* — Unless otherwise stipulated, such action by the lessor shall be commenced only after demand to pay or comply with the conditions of the lease and to vacate is made upon the lessee, or by serving written notice of such demand upon the person found on the premises, or by posting such notice on the premises if no person be found thereon, and the lessee fails to comply therewith after fifteen (15) days in the case of land or five (5) days in the case of buildings. (2)

**SEC. 10.3.** *Summary procedure.* — Except in cases covered by the agricultural tenancy laws or when the law otherwise expressly provides, all actions for forcible entry and unlawful detainer, irrespective of the amount of damages or unpaid rentals sought to be recovered, shall be governed by the summary procedure hereunder provided. (3)

**SEC. 10.4. *Pleadings allowed.*** — The only pleadings allowed to be filed are the complaint, compulsory counterclaim and cross-claim pleaded in the answer, and the answers to the counter-claims and cross-claims. (4a)

**SEC. 10.5. *Action on complaint.*** — Within five (5) days from receipt of the complaint, the court may:

- (a) dismiss the case *motu proprio* on any of the grounds for the dismissal of a civil action which are apparent from an examination of the pleadings and the documentary evidence attached to the pleadings; or
- (b) if no ground for dismissal is found, issue summons stating that the rules on summary procedure shall apply. (5a)

**SEC. 10.6. *Answer.*** — Within ten (10) days from service of summons, the defendant shall file an answer to the complaint and serve a copy thereof on the plaintiff. Affirmative and negative defenses not pleaded therein shall be deemed waived, except lack of jurisdiction over the subject matter. Cross-claims and compulsory counterclaims not asserted in the answer shall be considered barred. The answer to counterclaims or cross-claims shall be served and filed within ten (10) days from service of the answer in which they are pleaded. (6a)

**SEC. 10.7. *Effect of failure to answer.*** — Should the defendant fail to answer the complaint within the period above provided, the court shall *motu proprio* render judgment as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein within ten (10) days from the expiration of the time to file the answer. The court may in its discretion reduce the amount of damages and attorney's fees claimed for being excessive, without prejudice to the applicability of Section 3 (c), Rule 9 if there are two or more defendants. (7a)

**SEC. 10.8. *Preliminary conference; appearance of parties.*** — Not later than thirty (30) days after the last answer is filed, a preliminary conference shall be held. The provisions of Rule 16 on Preliminary Conference shall be applicable to the preliminary conference unless inconsistent with the provisions of this Rule.

In no case shall the duration of the preliminary conference exceed a

period of ninety (90) days from its commencement.

The failure of the plaintiff to appear in the preliminary conference shall be cause for the dismissal of the complaint. The defendant who appears in the absence of the plaintiff shall be entitled to judgment on the counterclaim in accordance with the next preceding section. All cross-claims shall be dismissed.

If a sole defendant shall fail to appear, the plaintiff shall likewise be entitled to judgment in accordance with the next preceding section. This procedure shall not apply where one of two or more defendants sued under a common cause of action who had pleaded a common defense shall appear at the preliminary conference.

No postponement of the preliminary conference shall be granted except for highly meritorious grounds and without prejudice to such sanctions as the court in the exercise of sound discretion may impose on the movant. (8a)

**SEC. 10.9. *Record of preliminary conference.*** — Within five (5) days after the termination of the preliminary conference, the court shall issue an order stating the matters taken up therein, including but not limited to:

- (a) whether the parties have arrived at an amicable settlement, and if so, the terms thereof;
- (b) the stipulations or admissions entered into by the parties;
- (c) whether, on the basis of the pleadings and the stipulations and admissions made by the parties, judgment may be rendered without the need of further proceedings, in which event the judgment shall be rendered within thirty (30) days from issuance of the order;
- (d) a clear specification of material facts which remain controverted; and
- (e) such other matters intended to expedite the disposition of the case. (9a)

**SEC. 10.10. *Submission of affidavits and position papers.*** — Within ten (10) days from receipt of the preliminary conference order, the parties shall submit the affidavits of their witnesses, which shall be in narrative form, and other evidence on the factual issues defined in the order, which

shall be attached as annexes, together with their position papers setting forth the law and the facts relied upon by them. (10a)

**SEC. 10.11. *Contents of affidavits.*** — The affidavits required to be submitted under this Rule shall state only facts of direct personal knowledge of the affiants which are admissible in evidence, and shall show their competence to testify to the matters stated therein.

A violation of this requirement may subject the party or counsel who submits the same to disciplinary action, and shall be cause to expunge the inadmissible affidavit or portion thereof from the record. (14)

**SEC. 10.12. *Period for rendition of judgment.*** — Within thirty (30) days after receipt of the affidavits and position papers, or the expiration of the period for filing the same, the court shall render judgment.

However, should the court find it necessary to clarify certain material facts, it may, during the said period, issue an order specifying the matters to be clarified, and require the parties to submit affidavits or other evidence on the said matters within ten (10) days from receipt of said order. Judgment shall be rendered within fifteen (15) days after the receipt of the last affidavit or the expiration of the period for filing the same.

The court shall not resort to the foregoing procedure just to gain time for the rendition of the judgment. (11)

**SEC. 10.13. *Referral for conciliation.*** — Cases requiring referral for conciliation, where there is no showing of compliance with such requirement, shall be dismissed without prejudice. (12a)

**SEC. 10.14. *Prohibited pleadings and motions.*** — The following petitions, motions, or pleadings shall not be allowed:

- (a) Motion to dismiss for failure to comply with Section 12;
- (b) Motion for new trial, or for reconsideration of a judgment, or for reopening of trial;
- (c) Petition for relief from judgment;
- (d) Motion for extension of time to file pleadings, affidavits or any other paper;

- (e) Memoranda;
- (f) Petition for certiorari, mandamus, or prohibition against any interlocutory order issued by the court;
- (g) Motion to declare the defendant in default;
- (h) Dilatory motions for postponement;
- (i) Reply;
- (j) Third-party complaints;
- (k) Interventions. (13)

**SEC. 10.15. *Preliminary injunction.*** — The court may grant preliminary injunction, in accordance with the provisions of Title VI, Rule 3 hereof, to prevent the defendant from committing further acts of dispossession against the plaintiff.

A possessor deprived of possession through forcible entry or unlawful detainer may, within five (5) days from the filing of the complaint, present a motion in the action for forcible entry or unlawful detainer for the issuance of a writ of preliminary mandatory injunction to restore such possession.

The court shall decide the motion within fifteen (15) days from its receipt thereof. (15a)

**SEC. 10.16. *Resolving defense of ownership.*** — When the defendant raises the defense of ownership in the pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession. (16)

**SEC. 10.17. *Judgment.*** — If after trial the court finds that the allegations of the complaint are true, it shall render judgment in favor of the plaintiff for the restitution of the premises, the sum justly due as arrears of rent or as reasonable compensation for the use and occupation of the premises, attorney's fees and costs. If it finds that said allegations are not true, it shall render judgment for the defendant to recover costs. If a counterclaim is established, the court shall render judgment for the sum found in arrears from either party and award costs as justice requires. (17)

**SEC. 10.18. *Judgment conclusive only on possession; not conclusive in actions involving title or ownership.*** — The judgment rendered in an

action for forcible entry or detainer shall be conclusive with respect to the possession only and shall in no way bind the title or affect the ownership of the land or building. Such judgment shall not bar an action between the same parties respecting title to the land or building.

The judgment or final order shall be appealable to the appropriate Regional Trial Court which shall decide the same on the basis of the entire record of the proceedings had in the court of origin and such memoranda as may be submitted by the parties or required by the Regional Trial Court. (18)

**SEC. 10.19. *Immediate execution of judgment; how to stay same.*** — If judgment is rendered against the defendant, execution shall issue immediately upon motion, unless an appeal has been perfected and the defendant, to stay execution, files a sufficient supersedeas bond, approved by the Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, or Municipal Circuit Trial Courts, and executed in favor of the plaintiff to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, defendant deposits with the appellate court the amount of rent due from time to time under the contract, if any, as determined by the judgment of the Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, or Municipal Circuit Trial Courts. In the absence of a contract, defendant shall deposit with the Regional Trial Court the reasonable value of the use and occupation of the premises for the preceding month or period at the rate determined by the judgment of the lower court on or before the tenth day of each succeeding month or period. The supersedeas bond shall be transmitted by the Municipal Trial Court, with the other papers, to the clerk of the Regional Trial Court to which the action is appealed.

All amounts so paid to the appellate court shall be deposited with said court or authorized government depository bank, and shall be held there until the final disposition of the appeal, unless the court, by agreement of the interested parties, or in the absence of reasonable grounds of opposition to a motion to withdraw, or for justifiable reasons, shall decree otherwise. Should the defendant fail to make the payments above prescribed from time to time during the pendency of the appeal, the appellate court, upon motion of the plaintiff, and upon proof of such failure, shall order the execution of the judgment appealed from with respect to the restoration of possession, but

such execution shall not be a bar to the appeal taking its course until the final disposition thereof on the merits.

After the case is decided by the Regional Trial Court, any money paid to the court by the defendant for purposes of the staying the execution shall be disposed of in accordance with the provisions of the judgment of the Regional Trial Court. In any case wherein it appears that the defendant has been deprived of the lawful possession of land or building pending the appeal by virtue of the execution of the judgment of the Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, or Municipal Circuit Trial Courts, damages for such deprivation of possession and restoration of possession may be allowed the defendant in the judgment of the Regional Trial Court disposing of the appeal. (19)

**SEC. 10.20. *Preliminary mandatory injunction in case of appeal.*** — Upon motion of the plaintiff, within ten (10) days from the perfection of the appeal to the Regional Trial Court, the latter may issue a writ of preliminary mandatory injunction to restore the plaintiff in possession if the court is satisfied that the defendant's appeal is frivolous or dilatory, or that the appeal of the plaintiff is *prima facie* meritorious. (20)

**SEC. 10.21. *Judgment of Regional Trial Court immediately executory notwithstanding pendency of petition for review.*** — The judgment of the Regional Trial Court against the defendant shall be immediately executory. For purposes of execution, the records of the case shall be remanded to the court of origin within sixty (60) days from the rendition of judgment or denial of the motion for reconsideration by the Regional Trial Court. (21a)

## Rule 11

### CONTEMPT (R71)

**SECTION 11.1. *Direct contempt punished summarily.*** — The following acts constitute direct contempt:

- (a) misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before it;
- (b) unjustified insults, threatening language, or derogatory remarks against the court in the pleadings, motions, and submissions filed before it;

- (c) offensive conduct toward others committed in the presence of the court;
- (d) refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so; and
- (e) making false verification, attestation, or certification against forum shopping.

In direct contempt, the court shall summarily adjudge and punish the erring person by:

- (a) fine not exceeding five thousand pesos or imprisonment not more than two (2) days, or both, if committed against the Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, or Municipal Circuit Trial Court;
- (b) a fine not exceeding twenty thousand pesos or imprisonment not more than ten (10) days, or both, if it is committed against the Regional Trial Court, Sharia'h Court, Court of Appeals, Sandiganbayan, Court of Tax Appeals, or Supreme Court. (1a)

**SEC. 11.2. Remedy.** — The person adjudged in direct contempt by any court may not appeal therefrom, but may avail of the remedies of certiorari or prohibition. The execution of the judgment shall be suspended pending resolution of such petition, provided such person files a bond fixed by the court which rendered the judgment and conditioned that said person will abide by and perform the judgment. (2a)

**SEC. 11.3. Acts of Indirect Contempt.** — The following acts constitute indirect contempt:

- (a) misbehavior of officers of the court in the performance of their official duties;
- (b) disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter such real property, for the

purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled to it;

- (c) any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1 of this Rule;
- (d) any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;
- (e) assuming to be an attorney or an officer of a court, and acting as such without authority;
- (f) failure to obey any lawful order or process of the court;
- (g) the rescue, or attempted rescue, of a person or property in *custodia legis*; and
- (h) other contumacious acts committed against the court.

Nothing in this section shall prevent the court from issuing processes to bring the defendants before it or from holding them in custody pending contempt proceedings. (3a)

**SEC. 11.4. *How proceedings commenced.*** — The court against which contempt was committed may initiate the proceedings for indirect contempt, *motu proprio*, through a show cause order or any other formal charge directing the persons concerned to explain why they should not be punished for contempt.

If the contempt charges are related to a pending principal action in court, charges for indirect contempt shall be commenced by a verified petition. It shall be filed in, docketed, and decided separately by the same court where the principal case is pending.

If there is no pending principal action in court, charges for indirect contempt shall be commenced by a verified petition before the Regional Trial Court having territorial jurisdiction over the residence or place of office of the plaintiff.

If the contempt is committed against the Supreme Court, Court of Appeals, Sandiganbayan, Court of Tax Appeals, or any division thereof, the petition shall be filed before such court, or any division thereof. (R71, 4a)

**SEC. 11.5. *When to file petition for indirect contempt.*** — A petition for indirect contempt shall be filed within thirty (30) days from commission of the complained act or from knowledge thereof. (n)

**SEC. 11.6. *Contents of the verified petition.*** — The petition shall contain the following:

- (a) the parties' personal circumstances;
- (b) the timeliness of the petition; and
- (c) a narration of the relevant facts, complained acts, issues, arguments, and relief sought. (n)

**SEC. 11.7. *Order.*** — Within ten (10) days from receipt of the petition, the court may:

- (a) dismiss the petition *motu proprio*, should it find the same frivolous or patently without merit; or
- (b) require the defendants to file their comments on the petition, should it find the petition sufficient in form and substance. (n)

**SEC. 11.8. *Bail.*** — When the court orders the defendants to be taken in custody in accordance with Section 11.3, the defendants may be released upon posting a bond, in an amount not exceeding twenty thousand pesos to be fixed by the court.

In case the defendants fail to appear during the summary hearing stated in Section 11.12, the court may issue an order of arrest to compel attendance, or forfeiture or confiscation of the bond, or both. (n)

**SEC. 11.9. *Imprisonment until order obeyed.*** — When the contempt consists in the refusal or omission to do a particular act which is within the power of the defendants to perform, they may be imprisoned by order of the court until they perform such act. (8a)

**SEC. 11.10. *Court may release defendant.*** — The court which issued the order imprisoning the defendant for contempt may discharge such defendant from imprisonment when it appears that public interest will not be prejudiced by said discharge. (10a)

**SEC. 11.11. *Punishment for indirect contempt.*** — If the defendants are adjudged guilty of indirect contempt committed against a Regional Trial Court or a court of equivalent or higher rank, they may be punished by a fine not exceeding fifty thousand pesos or imprisonment not exceeding six (6) months, or both. If defendants are adjudged guilty of contempt committed against a lower court, they may be punished by a fine not exceeding ten thousand pesos or imprisonment not exceeding one (1) month, or both. If the contempt consists in the violation of a writ of injunction, temporary restraining order or *status quo* order, they may also be ordered to make complete restitution to the party injured by such violation of the property involved or such amount as may be alleged and proved.

The writ of execution, as in ordinary civil actions, shall issue for the enforcement of a judgment imposing a fine unless the court otherwise provides. (n)

**SEC. 11.12. *Determination.*** — Within thirty (30) days from the filing of the comments or from expiration of the period to file the same, the court shall:

- (a) decide the petition based on the pleadings and documents thus filed, should the court find them sufficient for this purpose; or
- (b) conduct a summary hearing should the court find it necessary for the purpose of resolving the petition.

In no case shall the summary hearing exceed the prescribed thirty-day period.

Upon the termination of the summary hearing, the court shall have a fresh period of thirty (30) days to decide the petition. (n)

**SEC. 11.13. *Mode of appeal in indirect contempt.*** — The court's decision or final order may be questioned through an appeal in accordance with Title VIII, Rule 2 or Title VIII, Rule 3 or Title VIII, Rule 6 as the case may be. (n)