

**1997 RULES OF CIVIL PROCEDURE, AS AMENDED**

**(RULES 1-71, RULES OF COURT)**

**EFFECTIVE JULY 1, 1997**

*Per Resolution of the Supreme Court in Bar Matter No. 803 Adopted in Baguio City on April 8, 1997*

**RULES OF COURT**

Pursuant to the provisions of section 5 (5) of Article VIII of the Constitution, the Supreme Court hereby adopts and promulgates the following rules concerning the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged:

**RULE 1**

**General Provisions**

**Section 1.** *Title of the Rules.* — These Rule shall be known and cited as the Rules of Court. (1)

**Section 2.** *In what courts applicable.* — These Rules shall apply in all the courts, except as otherwise provided by the Supreme Court. (n)

**Section 3.** *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, (1a, R2)

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. (n)

(b) A criminal action is one by which the State prosecutes a person for an act or omission punishable by law. (n)

(c) A special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact. (2a, R2)

**Section 4.** *In what case not applicable.* — These Rules shall not apply to election cases, land registration, cadastral, naturalization and insolvency proceedings, and other cases not herein provided for, except by analogy or in a suppletory character and whenever practicable and convenient. (R143a)

**Section 5.** *Commencement of action.* — A civil action is commenced by the filing of the original complaint in court. If an additional defendant is impleaded in a later pleading, the action is commenced with regard to him on the dated of the filing of such later pleading, irrespective of whether the motion for its admission, if necessary, is denied by the court. (6a)

**Section 6.** *Construction.* — These Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. (2a)

## **Civil Actions**

### **Ordinary Civil Actions**

## **RULE 2**

### **Cause of Action**

**Section 1.** *Ordinary civil actions, basis of.* — Every ordinary civil action must be based on a cause of action. (n)

**Section 2.** *Cause of action, defined.* — A cause of action is the act or omission by which a party violates a right of another. (n)

**Section 3.** *One suit for a single cause of action.* — A party may not institute more than one suit for a single cause of action. (3a)

**Section 4.** *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 judgment upon the merits in any one is available as a ground for the dismissal of the others. (4a)

**Section 5.** *Joinder of causes of action.* — A party may in one pleading assert, in the alternative or otherwise, as many causes of action as he may have against an opposing 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 action are principally for recovery of money, the aggregate amount claimed shall be the test of jurisdiction. (5a)

**Section 6.** *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. (n)

## **RULE 3**

### **Parties to Civil Actions**

**Section 1.** *Who may be parties; plaintiff and defendant.* — Only natural or juridical persons, or entities authorized by law may be parties in a civil action. The term "plaintiff" may refer to the claiming party, the counter-claimant, the cross-claimant, or the third (fourth, etc.) — party plaintiff. The term "defendant" may refer to the original defending party, the defendant in a counter-claim, the cross-defendant, or the third (fourth, etc.) — party defendant. (1a)

**Section 2.** *Parties in interest.* — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest. (2a)

**Section 3.** *Representatives as parties.* — Where the action is allowed to be prosecuted and 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 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. (3a)

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

**Section 5.** *Minor or incompetent persons.* — A minor or a person alleged to be incompetent, may sue or be sued with the assistance of his father, mother, guardian, or if he has none, a guardian *ad litem*. (5a)

**Section 6.** *Permissive joinder of parties.* — All persons in whom or against whom any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, may, except as otherwise provided in these Rules, join as plaintiffs or be joined as defendants in one complaint, where any question of law or fact common to all such plaintiffs or to all such defendants may arise in the action; but the court may make such orders as may be just to prevent any plaintiff or defendant from being embarrassed or put to expense in connection with any proceedings in which he may have no interest. (6n)

**Section 7.** *Compulsory joinder of indispensable parties.* — Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants. (7)

**Section 8.** *Necessary party.* — A necessary party is one who is not indispensable but who ought to be joined as a party if complete relief is to be accorded as to those already parties, or for a complete determination or settlement of the claim subject of the action. (8a)

**Section 9.** *Non-joinder of necessary parties to be pleaded.* — Whenever in any pleading in which a claim is asserted a necessary party is not joined, the pleader shall set forth his name, if known, and shall state why he is omitted. Should the court find the reason for the omission unmeritorious, it may order the inclusion of the omitted necessary party if jurisdiction over his person may be obtained.

The failure to comply with the order for his inclusion, without justifiable cause, shall be deemed a waiver of the claim against such party.

The non-inclusion of a necessary party does not prevent the court from proceeding in the action, and the judgment rendered therein shall be without prejudice to the rights of such necessary party. (8a, 9a)

**Section 10.** *Unwilling co-plaintiff.* — If the consent of any party who should be joined as plaintiff can not be obtained, he may be made a defendant and the reason therefor shall be stated in the complaint. (10)

**Section 11.** *Misjoinder and non-joinder of parties.* — Neither misjoinder nor non-joinder of parties is 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 the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately. (11a)

**Section 12.** *Class suit.* — When the subject matter of the controversy is one of common or general interest to many persons so numerous that it is impracticable to join all as parties, a number of them which the court finds to be sufficiently numerous and representative as to fully protect the interests of all concerned may sue or defend for the benefit of all. Any party in interest shall have the right to intervene to protect his individual interest. (12a)

**Section 13. *Alternative defendants.*** — Where the plaintiff is uncertain against who of several persons he is entitled to relief, he may join any or all of them as defendants in the alternative, although a right to relief against one may be inconsistent with a right of relief against the other. (13a)

**Section 14. *Unknown identity or name of defendant.*** — Whenever the identity or name of a defendant is unknown, he may be sued as the unknown owner heir devisee, or by such other designation as the case may require, when his identity or true name is discovered, the pleading must be amended accordingly. (14)

**Section 15. *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 name and addresses of the persons composing said entity must all be revealed. (15a)

**Section 16. *Death of party; duty of counsel.*** — Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with his duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. (16a, 17a)

**Section 17. *Death or separation of a party who is a public officer.*** — When a public officer is a party in an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action may be continued and maintained by or against his successor if, within thirty (30) days after the successor takes office or such time as may be granted by the court, it is satisfactorily shown to the court by any party that there is a substantial need for continuing or maintaining it and that the successor adopts or continues or threatens to adopt or continue to adopt or continue the action of his predecessor. Before a substitution is made, the party or officer to be affected, unless expressly assenting thereto, shall be given reasonable notice of the application therefor and accorded an opportunity to be heard. (18a)

**Section 18. *Incompetency or incapacity.*** — If a party becomes incompetent or incapacitated, the court, upon motion with notice, may allow the action to be continued by or against the incompetent or incapacitated person assisted by his legal guardian or guardian *ad litem*. (19a)

**Section 19. *Transfer of interest.*** — In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. (20)

**Section 20. *Action and contractual money claims.*** — When the action is for recovery of money arising from contract, express or implied, and the defendant dies before entry of final judgment in the court in which the action was pending at the time of such death, it shall not be dismissed but shall instead be allowed to continue until entry of final judgment. A favorable judgment obtained by the plaintiff therein shall be enforced in the manner especially provided in these Rules for prosecuting claims against the estate of a deceased person. (21a)

**Section 21. *Indigent party.*** — A party may be authorized to litigate his action, claim or defense as an indigent if the court, upon an *ex parte* application and hearing, is satisfied that the party is one who has no money or property sufficient and available for food, shelter and basic necessities for himself and his family.

Such authority shall include an exemption from payment of docket and other lawful fees, and of transcripts of stenographic notes which the court may order to be furnished him. The amount of the 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.

Any adverse party may contest the grant of such authority at any time before judgment is rendered by the trial court. If the court should determine after hearing that the party declared as an indigent is in fact a person with sufficient income or property, the proper docket and other lawful fees shall be assessed and collected by the clerk of court. If payment is not made within the time fixed by the court, execution shall issue on the payment thereof, without prejudice to such other sanctions as the court may impose. (22a)

**Section 22. *Notice to the Solicitor General.*** — In any action involving the validity of any treaty, law, ordinance, executive order, presidential decree, rules or regulations, the court, in its discretion, may require the appearance of the Solicitor General who may be heard in person or a representative duly designated by him. (23a)

## **RULE 4**

### **Venue of Actions**

**Section 1. *Venue of real actions.*** — Actions affecting title to or possession of real property, or interest therein, shall be commenced and tried in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated.

Forcible entry and detainer actions shall be commenced and tried in the municipal trial court of the municipality or city wherein the real property involved, or a portion thereof, is situated. (1[a], 2[a]a)

**Section 2. *Venue of personal actions.*** — All other 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 in the case of a non-resident defendant where he may be found, at the election of the plaintiff. (2[b]a)

**Section 3. *Venue of actions against nonresidents.*** — 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. (2[c]a)

**Section 4. *When Rule not applicable.*** — This Rule shall not apply.

(a) In those cases where a specific rule or law provides otherwise; or

(b) Where the parties have validly agreed in writing before the filing of the action on the exclusive venue thereof. (3a, 5a)

## **RULE 5**

### **Uniform Procedure In Trial Courts**

**Section 1. *Uniform procedure.*** — The procedure in the Municipal Trial Courts shall be the same as in the Regional Trial Courts, except (a) where a particular provision expressly or impliedly applies only to either of said courts, or (b) in civil cases governed by the Rule on Summary Procedure. (n)

**Section 2. *Meaning of terms.*** — The term "Municipal Trial Courts" as used in these Rules shall include Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, and Municipal Circuit Trial Courts. (1a)

### **Procedure In Regional Trial Courts**

## **RULE 6**

### **Kinds Of Pleadings**

**Section 1. *Pleadings defined.*** — Pleadings are the written statements of the respective claims and defenses of the parties submitted to the court for appropriate judgment. (1a)

**Section 2. *Pleadings allowed.*** — The claims of a party are asserted in a complaint, counterclaim, cross-claim, third (fourth, etc.)-party complaint, or complaint-in-intervention.

The defenses of a party are alleged in the answer to the pleading asserting a claim against him.

An answer may be responded to by a reply. (n)

**Section 3. *Complaint.*** — The complaint is the pleading alleging the plaintiff's cause or causes of action. The names and residences of the plaintiff and defendant must be stated in the complaint. (3a)

**Section 4. *Answer.*** — An answer is a pleading in which a defending party sets forth his defenses. (4a)

**Section 5. *Defenses.*** — Defenses may either be negative or affirmative.

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

(b) An affirmative defense is an allegation of a new matter which, while hypothetically admitting the material allegations in the pleading of the claimant, would nevertheless prevent or bar recovery by him. 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. (5a)

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

**Section 7. *Compulsory counterclaim.*** — A compulsory counterclaim is one which, being cognizable by the regular courts of justice, 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 of whom the court cannot acquire jurisdiction. Such a counterclaim must be within the jurisdiction of the court both as to the amount and the nature thereof, except that in an original action before the Regional Trial Court, the counter-claim may be considered compulsory regardless of the amount. (n)

**Section 8. *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. (7)

**Section 9.** *Counter-counterclaims and counter-crossclaims.* — A counter-claim may be asserted against an original counter-claimant.

A cross-claim may also be filed against an original cross-claimant. (n)

**Section 10.** *Reply.* — A reply is a pleading, the office or function of which is to deny, or allege facts in denial or avoidance of new matters alleged by way of defense in the answer and thereby join or make issue as to such new matters. If a party does not file such reply, all the new matters alleged in the answer are deemed controverted.

If the plaintiff wishes to interpose any claims arising out of the new matters so alleged, such claims shall be set forth in an amended or supplemental complaint. (11)

**Section 11.** *Third, (fourth, etc.)—party complaint.* — A third (fourth, etc.) — party complaint is a claim that a defending party 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 his opponent's claim. (12a)

**Section 12.** *Bringing new parties.* — When the presence of parties other than those to the original action is required for the granting of complete relief in the determination of a counterclaim or cross-claim, the court shall order them to be brought in as defendants, if jurisdiction over them can be obtained. (14)

**Section 13.** *Answer to third (fourth, etc.)—party complaint.* — A third (fourth, etc.) — party defendant may allege in his answer his defenses, counterclaims or cross-claims, including such defenses that the third (fourth, etc.) — party plaintiff may have against the original plaintiff's claim. In proper cases, he may also assert a counterclaim against the original plaintiff in respect of the latter's claim against the third-party plaintiff. (n)

## **RULE 7**

### **Parts of a Pleading**

**Section 1.** *Caption.* — The caption sets forth the name of the court, the title of the action, and the docket number if assigned.

The title of the action indicates the names of the parties. They shall all be named in the original complaint or petition; but in subsequent pleadings, it shall be sufficient if the name of the first party on each side be stated with an appropriate indication when there are other parties.

Their respective participation in the case shall be indicated. (1a, 2a)

**Section 2. *The body.*** — The body of the pleading sets fourth its designation, the allegations of the party's claims or defenses, the relief prayed for, and the date of the pleading. (n)

(a) *Paragraphs.* — The allegations in the body of a pleading shall be divided into paragraphs so numbered to be readily identified, each of which shall contain a statement of a single set of circumstances so far as that can be done with convenience. A paragraph may be referred to by its number in all succeeding pleadings. (3a)

(b) *Headings.* — When two or more causes of action are joined the statement of the first shall be prefaced by the words "first cause of action," of the second by "second cause of action", and so on for the others.

When one or more paragraphs in the answer are addressed to one of several causes of action in the complaint, they shall be prefaced by the words "answer to the first cause of action" or "answer to the second cause of action" and so on; and when one or more paragraphs of the answer are addressed to several causes of action, they shall be prefaced by words to that effect. (4)

(c) *Relief.* — The pleading shall specify the relief sought, but it may add a general prayer for such further or other relief as may be deemed just or equitable. (3a, R6)

(d) *Date.* — Every pleading shall be dated. (n)

**Section 3. *Signature and address.*** — Every pleading must be signed by the party or counsel representing him, stating in either case his address which should not be a post office box.

The signature of counsel constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.

An 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. Counsel who deliberately files an unsigned pleading, or signs a pleading in violation of this Rule, or alleges scandalous or indecent matter therein, or fails promptly report to the court a change of his address, shall be subject to appropriate disciplinary action. (5a)

**Section 4. *Verification.*** — Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit .(5a)

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his knowledge and belief.

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. (6a)

**Section 5.** *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. 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 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. (n)

## **RULE 8**

### **Manner of Making Allegations in Pleadings**

**Section 1.** *In general.* — Every pleading shall contain in a methodical and logical form, a plain, concise and direct statement of the ultimate facts on which the party pleading relies for his claim or defense, as the case may be, omitting the statement of mere evidentiary facts. (1)

If a defense relied on is based on law, the pertinent provisions thereof and their applicability to him shall be clearly and concisely stated. (n)

**Section 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. (2)

**Section 3.** *Conditions precedent.* — In any pleading a general averment of the performance or occurrence of all conditions precedent shall be sufficient. (3)

**Section 4.** *Capacity.* — Facts showing the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of person that is made a party, must be averred. A party desiring to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued in a

representative capacity, shall do so by specific denial, which shall include such supporting particulars as are peculiarly within the pleader's knowledge. (4)

**Section 5.** *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)

**Section 6.** *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. (6)

**Section 7.** *Action or defense based on document.* — Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading. (7)

**Section 8.** *How to contest such documents.* — 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 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)

**Section 9.** *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. (9)

**Section 10.** *Specific denial.* — A defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial. Where a defendant desires to deny only a part of an averment, he 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 to the complaint, he shall so state, and this shall have the effect of a denial. (10a)

**Section 11.** *Allegations not specifically denied deemed admitted.* — Material averment in the complaint, other than those as to the amount of unliquidated damages, shall be deemed admitted when not specifically denied. Allegations of usury in a complaint to recover usurious interest are deemed admitted if not denied under oath. (1a, R9)

**Section 12.** *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 twenty (20) days after the service of the pleading upon him, or upon the court's own initiative at any time, the court may order any pleading to be stricken out

or that any sham or false, redundant, immaterial, impertinent, or scandalous matter be stricken out therefrom. (5, R9)

## **RULE 9**

### **Effect of Failure to Plead**

**Section 1.** *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, 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. (2a)

**Section 2.** *Compulsory counterclaim, or cross-claim, not set up barred.* — A compulsory counterclaim, or a cross-claim, not set up shall be barred. (4a)

**Section 3.** *Default; declaration of.* — If the defending party fails to answer within the time allowed therefor, 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. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court. (1a, R18)

(a) *Effect of order of default.* — A party in default shall be entitled to notice of subsequent proceedings but not to take part in the trial. (2a, R18)

(b) *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 failure to answer was due to fraud, accident, mistake or excusable negligence and that he has a meritorious defense. In such case, the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice. (3a, R18)

(c) *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. (4a, R18).

(d) *Extent of relief to be awarded.* — A judgment rendered against a party in default shall not exceed the amount or be different in kind from that prayed for nor award unliquidated damages. (5a, R18).

(e) *Where no defaults allowed.* — If the defending party in an action for annulment or declaration of nullity of marriage or for legal separation fails to answer, the court shall

order the prosecuting attorney to investigate whether or not a collusion between the parties exists, and if there is no collusion, to intervene for the State in order to see to it that the evidence submitted is not fabricated. (6a, R18)

## **RULE 10**

### **Amended and Supplemental Pleadings**

**Section 1.** *Amendments in general.* — 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. (1)

**Section 2.** *Amendments as a matter of right.* — A party may amend his 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 ten (10) days after it is served. (2a)

**Section 3.** *Amendments by leave of court.* — Except as provided in the next preceding section, substantial amendments may be made only upon leave of court. But such leave may be refused if it appears to the court that the motion was made with intent to delay. Orders of the court upon the matters provided in this section shall be made upon motion filed in court, and after notice to the adverse party, and an opportunity to be heard. (3a)

**Section 4.** *Formal amendments.* — A defect in the designation of the parties and other clearly 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)

**Section 5.** *Amendment to conform to or authorize presentation of evidence.* — When issues not raised by the pleadings are tried with the express or implied consent of the parties they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not effect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made. (5a)

**Section 6.** *Supplemental pleadings.* — Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him 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 ten (10) days from notice of the order admitting the supplemental pleading. (6a)

**Section 7. *Filing of amended pleadings.*** — 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)

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

## **RULE 11**

### **When to File Responsive Pleadings**

**Section 1. *Answer to the complaint.*** — The defendant shall file his answer to the complaint within fifteen (15) days after service of summons, unless a different period is fixed by the court. (1a)

**Section 2. *Answer of a defendant foreign private juridical entity.*** — Where the defendant is a foreign private juridical entity and service of summons is made on the government official designated by law to receive the same, the answer shall be filed within thirty (30) days after receipt of summons by such entity. (2a)

**Section 3. *Answer to amended complaint.*** — When the plaintiff files an amended complaint as a matter of right, the defendant shall answer the same within fifteen (15) days after being served with a copy thereof.

Where its filing is not a matter of right, the defendant shall answer the amended complaint within ten (10) days from notice of the order admitting the same. 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)

**Section 4. *Answer to counterclaim or cross-claim.*** — A counterclaim or cross-claim must be answered within ten (10) days from service. (4)

**Section 5. *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. (5a)

**Section 6. *Reply.*** — A reply may be filed within ten (10) days from service of the pleading responded to. (6)

**Section 7.** *Answer to supplemental complain.* — A supplemental complaint may be answered within ten (10) days from notice of the order admitting the same, unless a different period is fixed by the court. The answer to the complaint shall serve as the answer to the supplemental complaint if no new or supplemental answer is filed. (n)

**Section 8.** *Existing counterclaim or cross-claim.* — A compulsory counterclaim or a cross-claim that a defending party has at the time he files his answer shall be contained therein. (8a, R6)

**Section 9.** *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 pleading may, with the permission of the court, be presented as a counterclaim or a cross-claim by supplemental pleading before judgment. (9, R6)

**Section 10.** *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 may, by leave of court, set up the counterclaim or cross-claim by amendment before judgment. (3, R9)

**Section 11.** *Extension of time to plead.* — Upon motion and on such terms as may be just, the court may extend the time to plead provided in these Rules.

The court may also, upon like terms, allow an answer or other pleading to be filed after the time fixed by these Rules. (7)

## **RULE 12**

### **Bill of Particulars**

**Section 1.** *When applied for; purpose.* — Before responding to a pleading, a party may move for a definite statement or for a bill of particulars of any matter which is not averted with sufficient definiteness or particularity to enable him properly to prepare his responsive pleading. If the pleading is a reply, the motion must be filed within ten (10) days from service thereof. Such motion shall point out the defects complained of, the paragraphs wherein they are contained, and the details desired. (1a)

**Section 2.** *Action by the court.* — Upon the filing of the motion, the clerk of court must immediately bring it to the attention of the court which may either deny or grant it outright, or allow the parties the opportunity to be heard. (n)

**Section 3.** *Compliance with order.* — If the motion is granted, either in whole or in part, the compliance therewith must be effected within ten (10) days from notice of the order, unless a different period is fixed by the court. The bill of particulars or a more definite statement ordered by the court may be filed either in a separate or in an amended pleading, serving a copy thereof on the adverse party. (n)

**Section 4. *Effect of non-compliance.*** — If the order is not obeyed, or in case of insufficient compliance therewith, the court may order the striking out of the pleading or the portions thereof to which the order was directed or make such other order as it deems just. (1[c]a)

**Section 5. *Stay of period to file responsive pleading.*** — After service of the bill of particulars or of a more definite pleading, or after notice of denial of his motion, the moving party may file his responsive pleading within the period to which he was entitled at the time of filing his motion, which shall not be less than five (5) days in any event. (1[b]a)

**Section 6. *Bill a part of pleading.*** — A bill of particulars becomes part of the pleading for which it is intended. (1[a]a)

## **RULE 13**

### **Filing and Service of Pleadings, Judgments and Other Papers**

**Section 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. (n)

**Section 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 shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court. Where one counsel appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side. (2a)

**Section 3. *Manner of filing.*** — The filing of pleadings, appearances, motions, notices, orders, judgments and all other papers shall be made by presenting the original copies thereof, plainly indicated as such, personally to the clerk of court or by sending them by registered mail. 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. (1a)

**Section 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. (2a)

**Section 5. *Modes of service.*** — Service of pleadings motions, notices, orders, judgments and other papers shall be made either personally or by mail. (3a)

**Section 6. *Personal service.*** — Service of the papers may be made by delivering personally a copy to the party or his counsel, or by leaving it in his office with his clerk or with a person having charge thereof. If no person is found in his office, or his office is not known, or he 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. (4a)

**Section 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 counsel at his office, if known, otherwise at his residence, if known, with postage fully prepaid, 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 senders or the addressee, service may be done by ordinary mail. (5a; Bar Matter No. 803, 17 February 1998)

**Section 8. *Substituted service.*** — If service of pleadings, motions, notices, resolutions, orders and other papers cannot be made under the two preceding sections, the office and place of residence of the party or his counsel being unknown, service may be made by delivering the copy to the clerk of court, with proof of failure of both personal service and service by mail. The service is complete at the time of such delivery. (6a)

**Section 9. *Service of judgments, final orders, or resolutions.*** — Judgments, final orders or resolutions shall be served either personally or by registered mail. When a party summoned by publication has failed to appear in the action, judgments, final orders or resolutions against him shall be served upon him also by publication at the expense of the prevailing party. (7a)

**Section 10. *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 received the first notice of the postmaster, whichever date is earlier. (8a)

**Section 11. *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. A violation of this Rule may be cause to consider the paper as not filed. (n)

**Section 12. *Proof of filing.*** — The filing of a pleading or paper shall be proved by its existence in the record of the case. 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; 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. (n)

**Section 13. *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 by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with section 7 of this Rule. If service is made by 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. (10a)

**Section 14. *Notice of lis pendens.*** — In an action affecting the title or the right of possession of real property, the plaintiff and the defendant, when affirmative relief is claimed in his answer, may record in the office of the registry of deeds of the province in which the property is situated notice of the pendency of the action. Said notice shall contain the names of the parties and the object of the action or defense, and a description of the property in that province affected thereby. Only from the time of filing such notice for record shall a purchaser, or encumbrancer of the property affected thereby, 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.

The notice of *lis pendens* hereinabove mentioned may be cancelled only upon order of the court, after proper 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. (24a, R-14)

## **RULE 14**

### **Summons**

**Section 1. *Clerk to issue summons.*** — Upon the filing of the complaint and the payment of the requisite legal fees, the clerk of court shall forthwith issue the corresponding summons to the defendants. (1a)

**Section 2. *Contents.*** — The summons shall be directed to the defendant, 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 defendant answer within the time fixed by these Rules; (c) a notice that unless the defendant so answers plaintiff 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. (3a)

**Section 3. *By whom served.*** — The summons may be served by the sheriff, his deputy, or other proper court officer, or for justifiable reasons by any suitable person authorized by the court issuing the summons. (5a)

**Section 4. *Return.*** — When the service has been completed, the server shall, within five (5) days therefrom, serve a copy of the return, personally or by registered mail, to the plaintiff's counsel, and shall return the summons to the clerk, who issued it, accompanied by proof of service. (6a)

**Section 5. *Issuance of alias summons.*** — If a summons is returned without being served on any or all of the defendants, the server shall also serve a copy of the return on the plaintiff's counsel, stating the reasons for the failure of service, within five (5) days therefrom. In such a case, or if the summons has been lost, the clerk, on demand of the plaintiff, may issue an alias summons. (4a)

**Section 6. *Service in person on defendant.*** — Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him. (7a)

**Section 7. *Substituted service.*** — If, for justifiable causes, the defendant 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 defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof. (8a)

**Section 8. *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 defendants 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. (9a)

**Section 9. *Service upon prisoners.*** — When the defendant is a prisoner confined in a jail or institution, service shall be effected upon him by the officer having the management of such jail or institution who is deemed deputized as a special sheriff for said purpose. (12a)

**Section 10. *Service upon minors and incompetents.*** — When the defendant is a minor, insane or otherwise an incompetent, service shall be made upon him personally and on his legal guardian if he has one, or if none his guardian *ad litem* whose appointment shall be applied for by the plaintiff. In the case of a minor, service may also be made on his father or mother. (10a, 11a)

**Section 11. *Service upon domestic private juridical entity.*** — When the defendant 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, or in-house counsel. (13a)

**Section 12. *Service upon foreign private juridical entities.*** — When the defendant is a foreign private juridical entity which has transacted business in the Philippines, 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 or agents within the Philippines. (14a)

**Section 13.** *Service upon public corporations.* — When the defendant 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. (15)

**Section 14.** *Service upon defendant whose identity or whereabouts are unknown.* — In any action where the defendant is designated as an unknown owner, or the like, or whenever his whereabouts are unknown and cannot be ascertained by diligent inquiry, service may, by leave of court, be effected upon him by publication in a newspaper of general circulation and in such places and for such time as the court may order. (16a)

**Section 15.** *Extraterritorial service.* — When the defendant does not reside and is not found in the Philippines, and the action affects the personal status of the plaintiff or relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under section 6; or by publication in a newspaper of general circulation in such places 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 defendant, or in any other manner the court may deem sufficient. Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) days after notice, within which the defendant must answer. (17a)

**Section 16.** *Residents temporarily out of the Philippines.* — When any action is commenced against a defendant 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. (18a)

**Section 17.** *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 plaintiff or some person on his behalf, setting forth the grounds for the application. (19)

**Section 18.** *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 deputy. (20)

**Section 19.** *Proof of service by publication.* — If the service has been made by publication, service may be proved by the affidavit of the printer, his foreman or principal clerk, or of the 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 defendant by registered mail to his last known address. (21)

**Section 20. *Voluntary appearance.*** — The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance. (23a)

## **RULE 15**

### **Motions**

**Section 1. *Motion defined.*** — A motion is an application for relief other than by a pleading. (1a)

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

**Section 3. *Contents.*** — A motion shall state the relief sought to be obtained and the grounds upon which it is based, and if required by these Rules or necessary to prove facts alleged therein, shall be accompanied by supporting affidavits and other papers. (3a)

**Section 4. *Hearing of motion.*** — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice. (4a)

**Section 5. *Notice of hearing.*** — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion. (5a)

**Section 6. *Proof of service necessary.*** — No written motion set for hearing shall be acted upon by the court without proof of service thereof. (6a)

**Section 7. *Motion day.*** — Except for motions requiring immediate action, all motions shall be scheduled for hearing on Friday afternoons, or if Friday is a non-working day, in the afternoon of the next working day. (7a)

**Section 8. *Omnibus motion.*** — Subject to the provisions of section 1 of Rule 9, 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. (8a)

**Section 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. (n)

**Section 10. *Form.*** — The Rules applicable to pleadings shall apply to written motions so far as concerns caption, designation, signature, and other matters of form. (9a)

## **RULE 16**

### **Motion to Dismiss**

**Section 1. *Grounds.*** — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

- (a) That the court has no jurisdiction over the person of the defending party;
- (b) That the court has no jurisdiction over the subject matter of the claim;
- (c) That venue is improperly laid;
- (d) That the plaintiff has no legal capacity to sue;
- (e) That there is another action pending between the same parties for the same cause;
- (f) That the cause of action is barred by a prior judgment or by the statute of limitations;
- (g) That the pleading asserting the claim states no cause of action;
- (h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;
- (i) That the claim on which the action is founded is enforceable under the provisions of the statute of frauds; and
- (j) That a condition precedent for filing the claim has not been complied with. (1a)

**Section 2. *Hearing of motion.*** — At the hearing of the motion, the parties shall submit their arguments on the questions of law and their evidence on the questions of fact involved except those not available at that time. Should the case go to trial, the evidence presented during the hearing shall automatically be part of the evidence of the party presenting the same. (n)

**Section 3. *Resolution of Motion.*** — After the hearing, the court may dismiss the action or claim, deny the motion, or order the amendment of the pleading.

The court shall not defer the resolution of the motion for the reason that the ground relied upon is not indubitable.

In every case, the resolution shall state clearly and distinctly the reasons therefor. (3a)

**Section 4. *Time to plead.*** — If the motion is denied, the movant shall file his answer within the balance of the period prescribed by Rule 11 to which he was entitled at the time of serving his motion, but not less than five (5) days in any event, computed from his receipt of the notice of the denial. If the pleading is ordered to be amended, he shall file his answer within the period prescribed by Rule 11 counted from service of the amended pleading, unless the court provides a longer period. (4a)

**Section 5. *Effect of dismissal.*** — Subject to the right of appeal, an order granting a motion to dismiss based on paragraphs (f), (h) and (i) of section 1 hereof shall bar the refile of the same action or claim. (n)

**Section 6. *Pleading grounds as affirmative defenses.*** — If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed. (5a)

The dismissal of the complaint under this section shall be without prejudice to the prosecution in the same or separate action of a counterclaim pleaded in the answer. (n)

## **RULE 17**

### **Dismissal of Actions**

**Section 1. *Dismissal upon notice by plaintiff.*** — A complaint may be dismissed by the plaintiff by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment. Upon such notice being filed, the court shall issue an order confirming the dismissal. Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice 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. (1a)

**Section 2. *Dismissal upon motion of plaintiff.*** — Except as provided in the preceding section, a complaint 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 a counterclaim has been pleaded by a defendant prior to the service upon him 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 his counterclaim in a separate action unless within fifteen (15) days from notice of the motion he manifests his preference to have his counterclaim resolved in the same action. Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice. A class suit shall not be dismissed or compromised without the approval of the court. (2a)

**Section 3. *Dismissal due to fault of plaintiff.*** — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his 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 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. (3a)

**Section 4.** *Dismissal of counterclaim, cross-claim, or third-party complaint.* — The provisions of 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 1 of this Rule, shall be made before a responsive pleading or a motion for summary judgment is served or, if there is none, before the introduction of evidence at the trial or hearing. (4a)

## **RULE 18**

### **Pre-Trial**

**Section 1.** *When conducted.* — After the last pleading has been served and filed, it shall be the duty of the plaintiff to promptly move *ex parte* that the case be set for pre-trial (5a, R20)

**Section 2.** *Nature and purpose.* — The pre-trial is mandatory. The court shall consider:

- (a) The possibility of an amicable settlement or of a submission to alternative modes of dispute resolution;
- (b) The simplification of the issues;
- (c) The necessity or desirability of amendments to the pleadings;
- (d) The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;
- (e) The limitation of the number of witnesses;
- (f) The advisability of a preliminary reference of issues to a commissioner;
- (g) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist;
- (h) The advisability or necessity of suspending the proceedings; and
- (i) Such other matters as may aid in the prompt disposition of the action. (1a, R20)

**Section 3.** *Notice of pre-trial.* — The notice of pre-trial shall be served on counsel, or on the party who has no counsel. The counsel served with such notice is charged with the duty of notifying the party represented by him. (n)

**Section 4. *Appearance of parties.*** — It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents. (n)

**Section 5. *Effect of failure to appear.*** — The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof. (2a, R20)

**Section 6. *Pre-trial brief.*** — The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

- (a) A statement of their willingness to enter into amicable settlement or alternative modes of dispute resolution, indicating the desired terms thereof;
- (b) A summary of admitted facts and proposed stipulation of facts;
- (c) The issues to be tried or resolved;
- (d) The documents or exhibits to be presented stating the purpose thereof;
- (e) A manifestation of their having availed or their intention to avail themselves of discovery procedures or referral to commissioners; and
- (f) The number and names of the witnesses, and the substance of their respective testimonies.

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial. (n)

**Section 7. *Record of pre-trial.*** — The proceedings in the pre-trial shall be recorded. Upon the termination thereof, the court shall issue an order which shall recite in detail the matters taken up in the conference, the action taken thereon, the amendments allowed to the pleadings, and the agreements or admissions made by the parties as to any of the matters considered. Should the action proceed to trial, the order shall, explicitly define and limit the issues to be tried. The contents of the order shall control the subsequent course of the action, unless modified before trial to prevent manifest injustice. (5a, R20)

## **RULE 19**

### **Intervention**

**Section 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, with leave of court, 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. (2[a], [b]a, R12)

**Section 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 shall be attached to the motion and served on the original parties. (n)

**Section 3.** *Pleadings-in-intervention.* — The intervenor shall file a complaint-in-intervention if he asserts a claim against either or all of the original parties, or an answer-in-intervention if he unites with the defending party in resisting a claim against the latter. (2[c]a, R12)

**Section 4.** *Answer to complaint-in-intervention.* — The answer to the complaint-in-intervention shall be filed within fifteen (15) days from notice of the order admitting the same, unless a different period is fixed by the court. (2[d]a, R12)

## **RULE 20**

### **Calendar of Cases**

**Section 1.** *Calendar of cases.* — The clerk of court, under the direct supervision of the judge, shall keep a calendar of cases for pre-trial, for trial, those whose trials were adjourned or postponed, and those with motions to set for hearing. Preference shall be given to *habeas corpus* cases, election cases, special civil actions, and those so required by law. (1a, R22)

**Section 2.** *Assignment of cases.* — The assignment of cases to the different branches of a court shall be done exclusively by raffle. The assignment shall be done in open session of which adequate notice shall be given so as to afford interested parties the opportunity to be present. (7a, R22)

## **RULE 21**

### **Subpoena**

**Section 1.** *Subpoena and subpoena duces tecum.* — Subpoena is a process directed to a person requiring him 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 to bring with him any books, documents, or other things under his control, in which case it is called a subpoena *duces tecum*. (1a, R23)

**Section 2.** *By whom issued.* — The subpoena may be issued by —

- (a) the court before whom the witness is required to attend;
- (b) the court of the place where the deposition is to be taken;
- (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 judge 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 said penal institution for appearance or attendance in any court unless authorized by the Supreme Court (2a, R23)

**Section 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. (3a, R23)

**Section 4.** *Quashing a subpoena.* — The court 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, R23)

**Section 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 clerk of the court of the place in which the deposition is to be taken. The clerk shall not, however, issue a subpoena *duces tecum* to any such person without an order of the court. (5a, R23)

**Section 6.** *Service.* — Service of a subpoena shall be made in the same manner as personal or substituted service of summons. The original shall be exhibited and a copy thereof delivered to the person on whom it is served, tendering to him 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, R23)

**Section 7. *Personal appearance in court.*** — A person present in court before a judicial officer may be required to testify as if he were in attendance upon a subpoena is sued by such court or officer. (10, R23)

**Section 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 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 willful and without just excuse. (11, R23)

**Section 9. *Contempt.*** — Failure by any person without adequate cause to obey a subpoena served upon him 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. (12a R23)

**Section 10. *Exceptions.*** — The provisions of sections 8 and 9 of this Rule shall not apply to a witness who resides more than one hundred (100) kilometers from his residence to the place where he is to testify by the ordinary course of travel, or to a detention prisoner if no permission of the court in which his case is pending was obtained. (9a, R23)

## **RULE 22**

### **Computation of Time**

**Section 1. *How to compute time.*** — In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day. (a)

**Section 2. *Effect of interruption.*** — Should an act be done which effectively interrupts the running of the period, the allowable period after such interruption shall start to run on the day after notice of the cessation of the cause thereof.

The day of the act that caused the interruption shall be excluded in the computation of the period.  
(n)

## **RULE 23**

### **Depositions Pending Action**

**Section 1.** *Depositions pending action, when may be taken.* — By leave of court after jurisdiction has been obtained over any defendant or over property which is the subject of the action, or without such leave after an answer has been served, the testimony of any person, whether a party or not, may be taken, at the instance of any party, by deposition upon oral examination or written interrogatories. The attendance of witnesses may be compelled by the use of a subpoena as provided in Rule 21. 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 prescribes. (1a, R24)

**Section 2.** *Scope of examination.* — Unless otherwise ordered by the court as provided by section 16 or 18 of this Rule, the deponent may be examined regarding any matter, not privileged, which is relevant to the subject of the pending action, whether relating to the claim or defense of any other 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, R24)

**Section 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. (3a, R24)

**Section 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, in accordance with any one of the following provisions;

- (a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of 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 any purpose;
- (c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (1) that the witness is dead, or (2) that the witness resides at a distance more than one hundred (100) kilometers from the place of trial or hearing, or is out of the Philippines, unless it appears that his absence was procured by the party offering the deposition, or (3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment, or (4) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (5) upon application and notice, that 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 to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts. (4a, R24)

**Section 5.** *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 afterward 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, R24)

**Section 6.** *Objections to admissibility.* — Subject to the provisions of section 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 were then present and testifying (6, R24)

**Section 7.** *Effect of taking depositions.* — A party shall not be deemed to make a person his own witness for any purpose by taking his deposition. (7, R24)

**Section 8.** *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, but this shall not apply to the use by an adverse party of a deposition as described in paragraph (b) of section 4 of this Rule. (8, R24)

**Section 9.** *Rebutting deposition.* — At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party. (9, R24)

**Section 10.** *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 14 hereof. (10a, R24)

**Section 11.** *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, or 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 14 hereof. (11a, R24)

**Section 12.** *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. (12a, R24)

**Section 13.** *Disqualification by interest.* — No deposition shall be taken before a person who is a relative within the sixth degree of consanguinity or affinity, or employee or counsel of any of the parties, or who is a relative within the same degree, or employee of such counsel; or who is financially interested in the action. (13a, R24)

**Section 14.** *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. (14a, R24)

**Section 15.** *Deposition upon oral examination; notice; time and place.* — A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing, to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. On motion of any party upon whom the notice is served, the court may for cause shown enlarge or shorten the time. (15, R24)

**Section 16.** *Orders for the protection of parties and deponents.* — After notice is served for taking a deposition by oral examination, upon motion seasonably made by any party or by the person to be examined and for good cause shown, the court in which the action is pending may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that 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, or that 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 the court may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression. (16a, R24)

**Section 17.** *Record of examination, oath; objections.* — The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by some one acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically unless the parties agree otherwise. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of talking it, or to the evidence presented, 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. In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written interrogatories to the officers, who shall propound them to the witness and record the answers *verbatim*. (17, R24)

**Section 18.** *Motion to terminate or limit examination.* — At any time during the taking of the deposition, on motion or petition of any party or of the deponent, and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably 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 forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition, as provided in section 16 of this Rule. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time 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 requirement to pay such costs or expenses as the court may deem reasonable. (18a, R24)

**Section 19.** *Submission to witness; changes; signing.* — When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are 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 for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing 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 fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason be given therefor, if any, and the deposition may then be used as fully as though signed, unless on a motion to suppress under section 29 (f) of this Rule, the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part. (19a, R24)

**Section 20.** *Certification, and filing by officer.* — The officer shall certify on the deposition that the witness was duly sworn to by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of (here insert the name of witness)" and shall promptly file it with the court in which the action is pending or send it by registered mail to the clerk thereof for filing. (20, R24)

**Section 21.** *Notice of filing.* — The officer taking the deposition shall give prompt notice of its filing to all the parties. (21, R24)

**Section 22.** *Furnishing copies.* — Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent. (22, R24)

**Section 23.** *Failure to attend of party giving notice.* — If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another 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 and his counsel in so attending, including reasonable attorney's fees. (23a, R24)

**Section 24.** *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 and the witness because of such failure does not attend, and if another party attends in person or by counsel because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him and his counsel in so attending, including reasonable attorney's fees. (24a, R24)

**Section 25.** *Deposition upon written interrogatories; service of notice and of interrogatories.* — A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every other party with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within ten (10) days thereafter, a party so served may serve cross-interrogatories upon the party proposing to take the deposition. Within five (5) days thereafter, the latter may serve re-direct interrogatories upon a party who has served cross-interrogatories. Within three (3) days after being served with re-direct interrogatories, a party may serve recross-interrogatories upon the party proposing to take the deposition. (25, R24)

**Section 26.** *Officers to take responses and prepare record.* — A copy of the notice and copies of all interrogatories served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by sections 17, 19 and 20 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, R24)

**Section 27.** *Notice of filing and furnishing copies.* — When a deposition upon interrogatories is filed, the officer taking it shall promptly give notice thereof to all the parties, and may furnish copies to them or to the deponent upon payment of reasonable charges therefor. (27, R24)

**Section 28.** *Order for the protection of parties and deponents.* — After the service of the interrogatories and prior to the taking of the testimony of the deponent, the court in which the action is pending, on motion promptly made by a party or a deponent, and for good cause shown, may make any order specified in sections 15, 16 and 18 of this Rule which is appropriate and just or an order that the deposition shall not be taken before the officer designated in the notice or that it shall not be taken except upon oral examination. (28a, R24)

**Section 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 begins or as soon thereafter 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 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 in the form of the questions or answers, in the oath or affirmation, or in the conduct of the parties and errors of any

kind which might be obviated, removed, or cured if promptly prosecuted, are waived unless reasonable objection thereto is made at the taking of the deposition.

(e) *As to form of written interrogatories.* — Objections to the form of written interrogatories submitted under sections 25 and 26 of this Rule are waived unless served in writing upon the party propounding them within the time allowed for serving succeeding cross or other interrogatories and within three (3) days after service of the last interrogatories authorized.

(f) *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, indorsed, transmitted, filed, or otherwise dealt with by the officer under sections 17, 19, 20 and 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, R24)

## **RULE 24**

### **Depositions Before Action or Pending Appeal**

**Section 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 the residence of any expected adverse party. (1a R134)

**Section 2.** *Contents of petition.* — The petition shall be entitled in the name of the petitioner and shall show: (a) that the petitioner 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 his interest therein; (c) the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it; (d) the names or a description of the persons he expects will be adverse parties and their addresses so far as known; and (e) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition for the purpose of perpetuating their testimony. (2, R134)

**Section 3.** *Notice and service.* — The petitioner shall serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least twenty (20) 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, R134)

**Section 4. *Order and examination.*** — If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose deposition may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may be taken in accordance with Rule 23 before the hearing. (4a, R134)

**Section 5. *Reference to court.*** — For the purpose of applying Rule 23 to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed. (5a, R134)

**Section 6. *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 sub-sequently brought in accordance with the provisions of sections 4 and 5 of Rule 23. (6a, R134)

**Section 7. *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 taking of an appeal if the time therefor has not expired, the court in which the judgment was rendered may allow the taking of depositions of witnesses to perpetuate their testimony for in the event of further proceedings in the said court. In such case the party who desires to perpetuate the testimony may make 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. The motion shall state (a) the names and addresses of the persons to be examined and the substance of the testimony which he 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 make an order allowing the deposition to be taken, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these Rules for depositions taken in pending actions. (7a, R134)

## **RULE 25**

### **Interrogatories to Parties**

**Section 1. *Interrogatories to parties; service thereof.*** — Under the same conditions specified in section 1 of Rule 23, any party desiring to elicit material and relevant facts from any adverse parties 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. (1a)

**Section 2. *Answer to interrogatories.*** — The interrogatories shall be answered fully in writing and shall be signed and sworn to by the person making them. 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 service thereof unless the court on motion and for good cause shown, extends or shortens the time. (2a)

**Section 3. *Objections to interrogatories.*** — Objections to any interrogatories may be presented to the court within ten (10) days after service thereof, with notice as in case of a motion; and answers shall be deferred until the objections are resolved, which shall be at as early a time as is practicable. (3a)

**Section 4. *Number of interrogatories.*** — No party may, without leave of court, serve more than one set of interrogatories to be answered by the same party. (4)

**Section 5. *Scope and use of interrogatories.*** — Interrogatories may relate to any matters that can be inquired into under section 2 of Rule 23, and the answers may be used for the same purposes provided in section 4 of the same Rule. (5a)

**Section 6. *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. (n)

## **RULE 26**

### **Admission by Adverse Party**

**Section 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 copy have already been furnished. (1a)

**Section 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 service thereof, or within such further time as the court may allow on motion, the party to whom the request is directed files and serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters.

Objections to any request for admission shall be submitted to the court by the party requested within the period for and prior to the filing of his sworn statement as contemplated in the preceding paragraph and his compliance therewith shall be deferred until such objections are resolved, which resolution shall be made as early as practicable. (2a)

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

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

**Section 5.** *Effect of failure to file and serve request for admission.* — Unless otherwise allowed by the court for good cause shown and to prevent a 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 not be permitted to present evidence on such facts. (n)

## **RULE 27**

### **Production or Inspection of Documents or Things**

**Section 1.** *Motion for production or inspection; order.* — Upon motion of any party showing good cause therefor, the court in which an action is pending may (a) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, 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) order any party to 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. (1a)

## **RULE 28**

### **Physical and Mental Examination of Persons**

**Section 1.** *When examination may be ordered.* — In an action in which the mental or physical condition of a party is in controversy, the court in which the action is pending may in its discretion order him to submit to a physical or mental examination by a physician. (1)

**Section 2.** *Order for examination.* — The order for examination may be made only on motion for good cause shown and upon notice to the party to be examined and to all other parties, and shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made. (2)

**Section 3. *Report of findings.*** — If requested by the party examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings and conclusions. After such request and delivery, the party causing the examination to be made shall be entitled upon request to receive from the party examined a like report of any examination, previously or thereafter made, of the same mental or physical condition. If the party examined refuses to deliver such report, the court on motion and notice may make an order requiring delivery on such terms as are just, and if a physician fails or refuses to make such a report the court may exclude his testimony if offered at the trial. (3a)

**Section 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 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 in respect of the same mental or physical examination. (4)

## **RULE 29**

### **Refusal to Comply with Modes of Discovery**

**Section 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 Rules 23 or 25.

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. (1a)

**Section 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. (2a)

**Section 3. *Other consequences.*** — If any party or an officer or managing agent of a party refuses to obey an order made under section 1 of this Rule requiring him to answer designated questions, or an order under Rule 27 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 an order made under Rule 28 requiring him 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 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. (3a)

**Section 4.** *Expenses on refusal to admit.* — If a party after being served with a request under Rule 26 to admit the genuineness of any document or the truth of any matter of fact serves a sworn denial thereof and if the party requesting the admissions thereafter proves the genuineness of such document or the truth of any such matter of fact, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making such proof, including attorney's fees. Unless the court finds that there were good reasons for the denial or that admissions sought were of no substantial importance, such order shall be issued. (4a)

**Section 5.** *Failure of party to attend or serve answers.* — If a party or an officer or managing agent of a party wilfully fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers to interrogatories submitted under Rule 25 after proper service of such interrogatories, the court on motion and notice, may 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 to pay reasonable expenses incurred by the other, including attorney's fees. (5)

**Section 6.** *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)

## **RULE 30**

### **Trial**

**Section 1. *Notice of Trial.*** — Upon entry of a case in the trial calendar, the clerk shall notify the parties of the date of its trial in such manner as shall ensure his receipt of that notice at least five (5) days before such date. (2a, R22)

**Section 2. *Adjournments and postponements.*** — A court may adjourn a trial from day to day, and to any stated time, as the expeditious and convenient transaction of business may require, but shall have no power to adjourn a trial for a longer period than one month for each adjournment nor more than three months in all, except when authorized in writing by the Court Administrator, Supreme Court. (3a, R22)

**Section 3. *Requisites of motion to postpone trial for absence of evidence.*** — A motion to postpone a trial on the ground of absence of evidence can be granted only upon affidavit showing the materiality or relevancy of such evidence, and that due diligence has been used to procure it. But if the adverse party admits the facts to be given in evidence, even if he objects or reserves the right to object to their admissibility, the trial shall not be postponed. (4a, R22; Bar Matter No. 803, 21 July 1998)

**Section 4. *Requisites of motion to postpone trial for illness of party or counsel.*** — A motion to postpone a trial on the ground of illness of a party or counsel may be granted if it appears upon affidavit or sworn certification that the presence of such party or counsel at the trial is indispensable and that the character of his illness is such as to render his non-attendance excusable. (5a, R22)

**Section 5. *Order of trial.*** — Subject to the provisions of section 2 of Rule 31, and unless the court for special reasons otherwise directs, the trial shall be limited to the issues stated in the pre-trial order and shall proceed as follows:

- (a) The plaintiff shall adduce evidence in support of his complaint;
- (b) The defendant shall then adduce evidence in support of his defense, counterclaim, cross-claim and third-party complaints;
- (c) The third-party defendant if any, shall adduce evidence of his defense, counterclaim, cross-claim and fourth-party complaint;
- (d) The fourth-party, and so forth, if any, shall adduce evidence of the material facts pleaded by them;
- (e) The parties against whom any counterclaim or cross-claim has been pleaded, shall adduce evidence in support of their defense, in the order to be prescribed by the court;
- (f) The parties may then respectively adduce rebutting evidence only, unless the court, for good reasons and in the furtherance of justice, permits them to adduce evidence upon their original case; and

(g) Upon admission of the evidence, the case shall be deemed submitted for decision, unless the court directs the parties to argue or to submit their respective memoranda or any further pleadings.

If several defendants or third-party defendants, and so forth, having separate defenses appear by different counsel, the court shall determine the relative order of presentation of their evidence. (1a, R30)

**Section 6.** *Agreed statement of facts.* — The parties to any action may agree, in writing, upon the facts involved in the litigation, and submit the case for judgment on the facts agreed upon, without the introduction of evidence.

If the parties agree only on some of the facts in issue, the trial shall be held as to the disputed facts in such order as the court shall prescribe. (2a, R30)

**Section 7.** *Statement of judge.* — During the hearing or trial of a case any statement made by the judge with reference to the case, or to any of the parties, witnesses or counsel, shall be made of record in the stenographic notes. (3a, R30)

**Section 8.** *Suspension of actions.* — The suspension of actions shall be governed by the provisions of the Civil Code. (n)

**Section 9.** *Judge to receive evidence; delegation to clerk of court.* — The judge of the court where the case is pending shall personally receive the evidence to be adduced by the parties. However, in default or *ex parte* hearings, and in any case where the parties agree in writing, the court may delegate the reception of evidence to its clerk of court who is a member of the bar. The clerk of court shall have no power to rule on objections to any question or to the admission of exhibits, which objections shall be resolved by the court upon submission of his report and the transcripts within ten (10) days from termination of the hearing. (n)

## **RULE 31**

### **Consolidation or Severance**

**Section 1.** *Consolidation.* — When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated, and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. (1)

**Section 2.** *Separate trials.* — The court, in furtherance of convenience or to avoid prejudice, may order a separate trial of any claim, cross-claim, counterclaim, or third-party complaint, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party complaints or issues. (2a)

## **RULE 32**

### **Trial by Commissioner**

**Section 1.** *Reference by consent.* — By written consent of both parties, the court may order any or all of the issues in a case to be referred to a commissioner to be agreed upon by the parties or to be appointed by the court. As used in these Rules, the word "commissioner" includes a referee, an auditor and an examiner. (1a, R33)

**Section 2.** *Reference ordered on motion.* — When the parties do not consent, the court may, upon the application of either or of its own motion, direct a reference to a commissioner in the following cases:

- (a) When the trial of an issue of fact requires the examination of a long account on either side, in which case the commissioner may be directed to hear and report upon the whole issue or any specific question involved therein;
- (b) When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect.
- (c) When a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of a case, or for carrying a judgment or order into effect. (2a, R33)

**Section 3.** *Order of reference; powers of the commissioner.* — When a reference is made, the clerk shall forthwith furnish the commissioner with a copy of the order of reference. The order may specify or limit the powers of the commissioner, and may direct him to report only upon particular issues, 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 other specifications and limitations stated in the order, the commissioner has and shall exercise the power to regulate the proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may issue subpoenas and subpoenas *duces tecum*, swear witnesses, and unless otherwise provided in the order of reference, he may rule upon the admissibility of evidence. The trial or hearing before him shall proceed in all respects as it would if held before the court. (3a, R33)

**Section 4.** *Oath of commissioner.* — Before entering upon his duties the commissioner shall be sworn to a faithful and honest performance thereof. (14, R33)

**Section 5.** *Proceedings before commissioner.* — Upon receipt of the order of reference and unless otherwise provided therein, the commissioner 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. (5a, R33)

**Section 6.** *Failure of parties to appear before commissioner.* — If a party fails to appear at the time and place appointed, the commissioner may proceed *ex parte* or, in his discretion, adjourn the proceedings to a future day, giving notice to the absent party or his counsel of the adjournment. (6a, R33)

**Section 7.** *Refusal of witness.* — The refusal of a witness to obey a subpoena issued by the commissioner or to give evidence before him, shall be deemed a contempt of the court which appointed the commissioner. (7a R33)

**Section 8.** *Commissioner shall avoid delays.* — It is the duty of the commissioner 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. (8a, R33)

**Section 9.** *Report of commissioner.* — Upon the completion of the trial or hearing or proceeding before the commissioner, he shall file with the court his report in writing upon the matters submitted to him by the order of reference. When his powers are not specified or limited, he shall set forth his findings of fact and conclusions of law in his report. He shall attach thereto all exhibits, affidavits, depositions, papers and the transcript, if any, of the testimonial evidence presented before him. (9a, R33)

**Section 10.** *Notice to parties of the filing of report.* — Upon the filing of the report, the parties shall be notified by the clerk, and they shall be allowed ten (10) days within which to signify grounds of objections to the findings of the report, if they so desire. Objections to the report based upon grounds which were available to the parties during the proceedings before the commissioner, other than objections to the findings and conclusions therein, set forth, shall not be considered by the court unless they were made before the commissioner. (10, R33)

**Section 11.** *Hearing upon report.* — Upon the expiration of the period of ten (10) days referred to in the preceding section, the report shall be set for hearing, after which the court shall issue an order adopting, modifying, or rejecting the report in whole or in part, or recommitting it with instructions, or requiring the parties to present further evidence before the commissioner or the court. (11a, R33)

**Section 12.** *Stipulations as to findings.* — When the parties stipulate that a commissioner's findings of fact shall be final, only questions of law shall thereafter be considered. (12a, R33)

**Section 13.** *Compensation of commissioner.* — The court shall allow the commissioner such reasonable compensation as the circumstances of the case warrant, to be taxed as costs against the defeated party, or apportioned, as justice requires. (13, R33)

## **RULE 33**

### **Demurrer to Evidence**

**Section 1. *Demurrer to evidence.*** — After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence. (1a, R35)

## **RULE 34**

### **Judgment on the Pleadings**

**Section 1. *Judgment on the pleadings.*** — Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, 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. (1a, R19)

## **RULE 35**

### **Summary Judgments**

**Section 1. *Summary judgment for claimant.*** — A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof. (1a, R34)

**Section 2. *Summary judgment for defending party.*** — A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory relief is sought may, at any time, move with supporting affidavits, depositions or admissions for a summary judgment in his favor as to all or any part thereof. (2a, R34)

**Section 3. *Motion and proceedings thereon.*** — The motion shall be served at least ten (10) days before the time specified for the hearing. The adverse party may serve opposing affidavits, depositions, or admissions at least three (3) days before the hearing. After the hearing, the judgment sought shall be rendered forthwith if the pleadings, supporting 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, R34)

**Section 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 counsel shall ascertain what material facts exist without substantial controversy and

what are actually and in good faith controverted. It 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 directing such further proceedings in the action as are just. The facts so specified shall be deemed established, and the trial shall be conducted on the controverted facts accordingly. (4a, R34)

**Section 5.** *Form of affidavits and supporting papers.* — Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Certified true copies of all papers or parts thereof referred to in the affidavit shall be attached thereto or served therewith. (5a, R34)

**Section 6.** *Affidavits in bad faith.* — Should it appear to its satisfaction at any time that any of the affidavits presented pursuant to this Rule are presented in bad faith, or solely for the purpose of delay, the court shall forthwith order the offending party or counsel to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur including attorney's fees, it may, after hearing further adjudge the offending party or counsel guilty of contempt. (6a, R34)

## **RULE 36**

### **Judgments, Final Orders and Entry Thereof**

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

**Section 2.** *Entry of judgments and final orders.* — If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, 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, within a certificate that such judgment or final order has become final and executory. (2a, 10, R51)

**Section 3.** *Judgment for or against one or more of several parties.* — Judgment may be given for or against one or more of several plaintiffs and for or against one or more of several defendants. 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)

**Section 4.** *Several judgments.* — In an action against several defendants, the court may, when a several judgment is proper, render judgment against one or more of them, leaving the action to proceed against the others. (4)

**Section 5. *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. (5a)

**Section 6. *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. (6a)

## **RULE 37**

### **New Trial or Reconsiderations**

**Section 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) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or

(b) Newly discovered evidence, which he 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 is insufficient to justify the decision or final order, or that the decision or final order is contrary to law. (1a)

**Section 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 motion. A motion for the cause mentioned in paragraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by affidavits. A motion for the cause mentioned in paragraph (b) shall be supported by 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)

**Section 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. (3a)

**Section 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. (n)

**Section 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 (4a, 4, IRG)

**Section 6.** *Effect of granting of motion for new trial.* — If a new trial is granted in accordance with the provisions of this Rules 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. (5a)

**Section 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 an 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. (6a)

**Section 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. (7a)

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

## **RULE 38**

### **Relief from Judgments, Orders, or Other Proceedings**

**Section 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 any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside. (2a)

**Section 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 may file a petition in such court and in the same case praying that the appeal be given due course. (1a)

**Section 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)

**Section 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. (4a)

**Section 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 will pay the adverse party all damages and costs that may be awarded to him 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. (5a)

**Section 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. (6a)

**Section 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. (7a)

## **RULE 39**

### **Execution, Satisfaction and Effect of Judgments**

**Section 1.** *Execution upon judgments or final orders.* — Execution shall issue as a matter of right, or motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected. (1a)

If the appeal has been duly perfected and finally resolved, the execution may forthwith be applied for in the court of origin, on motion of the judgment obligee, submitting therewith certified true copies of the judgment or judgments or final order or orders sought to be enforced and of the entry thereof, with notice to the adverse party.

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. (n)

**Section 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. (2a)

**Section 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. (3a )

**Section 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. (4a)

**Section 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. (5a)

**Section 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. The 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)

**Section 7. *Execution in case of death of party.*** — In case of the death of a party, execution may issue or be enforced in the following manner:

- (a) In case of the death of the judgment obligee, upon the application of his executor or administrator, or successor in interest;
- (b) In case of the death of the judgment obligor, against his executor or administrator or successor in interest, if the judgment be for the recovery of real or personal property, or the enforcement of a lien thereon;
- (c) In case of the death of the judgment obligor, after execution is actually levied upon any of his property, the same may be sold for the satisfaction of the judgment obligation, and the officer making the sale shall account to the corresponding executor or administrator for any surplus in his hands. (7a)

**Section 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 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)

**Section 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 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 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 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 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 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. (8a, 15a)

**Section 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. (10a)

(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. (8[c]a)

(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 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. (13a)

(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 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 the hearing and after the former has failed to remove the same within a reasonable time fixed by the court. (14a)

(e) *Delivery of personal property.* — In judgment 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. (8a)

**Section 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 disobeys such judgment. (9a)

**Section 12.** *Effect of levy on execution as to third person.* — 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. (16a)

**Section 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 resides, and land necessarily used in connection therewith;
- (b) Ordinary tools and implements personally used by him in his 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 in his 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 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, lawyers, 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 earns his livelihood;
- (i) So much of the salaries, wages, or earnings of the judgment obligor for his personal services within the four months preceding the levy as are necessary for the support of his 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. (12a)

**Section 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 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 effectivity 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. (11a)

**Section 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 above-mentioned 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 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 (P50,000.00) 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 the same manner as personal service of pleadings and other papers as provided by section 6 of Rule 13.

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 the 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 of 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. (18a)

**Section 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 agent, and such person makes an affidavit of his 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 copy thereof, stating the grounds of such right or title, and a 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 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 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. (17a)

**Section 17.** *Penalty for selling without notice, or removing or defacing notice.* — An officer selling without the notice prescribed by section 15 of this Rule shall be liable to pay punitive damages in the amount of five thousand (P5,000.00) pesos to any person injured thereby, in addition to his 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 (P5,000.00) pesos to any person injured by reason thereof, in addition to his actual damages, to be recovered by motion in the same action. (19a)

**Section 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. (20a)

**Section 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 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 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 deputies, can become a purchaser, nor be interested directly or indirectly in any purchase at such sale. (21a)

**Section 20.** *Refusal of purchaser to pay.* — If a purchaser refuses to pay the amount bid by him for property struck off to him 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 for contempt if he 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. (22a)

**Section 21.** *Judgment obligee as purchaser.* — When the purchaser is the judgment obligee, and no third-party claim has been filed, he need not pay the amount of the bid if it does not exceed the amount of his judgment. If it does, he shall pay only the excess. (23a)

**Section 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 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. (24a)

**Section 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 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. (25a)

**Section 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. (26a)

**Section 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. (27 a)

**Section 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. (28a)

**Section 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 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. (29a)

**Section 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 purchase, with the *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 to 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

redemption prior to his 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 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 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. (30a)

**Section 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 must make the same payments as are required to effect a redemption by a redemptioner, whereupon, no further redemption shall be allowed and he is restored to his estate. The person to whom the redemption payment is made must execute and deliver to him 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 to the officer who made the sale. (31a)

**Section 30.** *Proof required of redemptioner.* — A redemptioner must produce to the officer, or person from whom he seeks to redeem, and serve with his notice to the officer a copy of the judgment or final order under which he claims the right to redeem, certified by the clerk of the court wherein the judgment or final order is entered, or, if he 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 claim; and an affidavit executed by him or his agent, showing the amount then actually due on the lien. (32a)

**Section 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 obligee, 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 husbandry; or to make the necessary repairs to buildings thereon while he occupies the property. (33a)

**Section 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 period of redemption. (34a)

**Section 33.** *Deed and possession to be given at expiration of redemption period; by whom executed or given.* — If no redemption be 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 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 adversely to the judgment obligor. (35a)

**Section 34.** *Recovery of price if sale not effective; revival of judgment.* — If the purchaser of real property sold on execution, or his 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 claim to the property, he may on motion in the same action or in a separate action recover from the judgment obligee the price paid, with interest, or so much thereof as has not been delivered to the judgment obligor, or he may, on motion, have the original judgment revived in his name for the whole price with interest, or so much thereof as has been delivered to the judgment obligor. The judgment so revived shall have the same force and effect as an original judgment would have as of the date of the revival and no more. (36a)

**Section 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 proportion, he 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 property or before sale, he may compel repayment from the principal. (37a)

**Section 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 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 satisfaction 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. (38a)

**Section 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 remain 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. (39a)

**Section 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 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 must take it in writing and certify it to the court. All examinations and answers before a court 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. (40a)

**Section 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 debt or so much thereof as may be necessary to satisfy the judgment, in the manner prescribed in section 9 of this Rule, and the sheriff's receipt shall be a sufficient discharge for the amount so paid or directed to be credited by the judgment obligee on the execution. (41a)

**Section 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 current income and expenses, it appears that the earnings of the judgment obligor for his personal services are more than necessary for the support of his family, the court may order that he pay the judgment in fixed monthly installments, and upon his failure to pay any such installment when due without good excuse, may punish him for indirect contempt. (42a)

**Section 41.** *Appointment of receiver.* — The court may appoint a receiver of the property of the judgment obligor; and it may also forbid a transfer or other disposition of, or any interference with, the property of the judgment obligor not exempt from execution. (43a)

**Section 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 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 state upon execution, and the proceedings thereon shall be approved by the court before the execution of the deed. (34a)

**Section 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 denied 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. (45a)

**Section 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 counsel unless a revocation of his authority is filed, or upon the endorsement of such admission by the judgment obligee or his counsel, on the face of the record of the judgment. (46a)

**Section 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 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 counsel to do so, or may order the entry of satisfaction to be made without such admission. (47a)

**Section 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 has notice of the action or proceeding, and an opportunity at the surety's request to join in the defense. (48a)

**Section 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 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 missed 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. (49a)

**Section 48.** *Effect of foreign judgments or final orders.* — 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:

(a) In case of a judgment or final order upon a specific thing, the judgment or final order, is conclusive upon the title to the thing, and

(b) 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. (50a)

## Appeals

### RULE 40

#### Appeal From Municipal Trial Courts to the Regional Trial Courts

**Section 1.** *Where to appeal.* — An appeal from a judgment or final order of a Municipal Trial Court may be taken to the Regional Trial Court exercising jurisdiction over the area to which the former pertains. 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. (a)

**Section 2.** *When to appeal.* — An appeal may be taken within fifteen (15) days after notice to the appellant of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days after notice of the judgment or final order.

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. (n)

**Section 3. *How to appeal.*** — The appeal is taken by filing a notice of appeal with the court that rendered the judgment or final order appealed from. The notice of appeal shall indicate the parties to the appeal, the judgment or final order or part thereof appealed from, and state the material dates showing the timeliness of the appeal.

A record on appeal shall be required only in special proceedings and in other cases of multiple or separate appeals.

The form and contents of the record on appeal shall be as provided in section 6, Rule 41.

Copies of the notice of appeal, and the record on appeal where required, shall be served on the adverse party. (n)

**Section 4. *Perfection of appeal; effect thereof.*** — The perfection of the appeal and the effect thereof shall be governed by the provisions of section 9, Rule 41. (n)

**Section 5. *Appellate court docket and other lawful fees.*** — Within the period for taking an appeal, the appellant shall pay to the clerk of the court which rendered the judgment or final order appealed from the full amount of the appellate court docket and other lawful fees. Proof of payment thereof shall be transmitted to the appellate court together with the original record or the record on appeal, as the case may be. (n)

**Section 6. *Duty of the clerk of court.*** — Within fifteen (15) days from the perfection of the appeal, the clerk of court or the branch clerk of court of the lower court shall transmit the original record or the record on appeal, together with the transcripts and exhibits, which he shall certify as complete, to the proper Regional Trial Court. A copy of his letter of transmittal of the records to the appellate court shall be furnished the parties. (n)

**Section 7. *Procedure in the Regional Trial Court.*** —

(a) Upon receipt of the complete record or the record on appeal, the clerk of court of the Regional Trial Court shall notify the parties of such fact.

(b) Within fifteen (15) days from such notice, it shall be the duty of the appellant to submit a memorandum which shall briefly discuss the errors imputed to the lower court, a copy of which shall be furnished by him to the adverse party. Within fifteen (15) days from receipt of the appellant's memorandum, the appellee may file his memorandum. Failure of the appellant to file a memorandum shall be a ground for dismissal of the appeal.

(c) Upon the filing of the memorandum of the appellee, or the expiration of the period to do so, the case shall be considered submitted for decision. The Regional Trial Court shall decide the case on the basis of the entire record of the proceedings had in the court of original and such memoranda as are filed. (n)

**Section 8. *Appeal from orders dismissing case without trial; lack of jurisdiction.*** — If an appeal is taken from an order of the lower court dismissing the case without a trial on the merits, the Regional Trial Court may affirm or reverse it, as the case may be. In case of affirmance and the ground of dismissal is lack of jurisdiction over the subject matter, the Regional Trial Court, if it has jurisdiction thereover, shall try the case on the merits as if the case was originally filed with it. In case of reversal, the case shall be remanded for further proceedings.

If the case was tried on the merits by the lower court without jurisdiction over the subject matter, the Regional Trial Court on appeal shall not dismiss the case if it has original jurisdiction thereof, but shall decide the case in accordance with the preceding section, without prejudice to the admission of amended pleadings and additional evidence in the interest of justice. (n)

**Section 9. *Applicability of Rule 41.*** — The other provisions of Rule 41 shall apply to appeals provided for herein insofar as they are not inconsistent with or may serve to supplement the provisions of this Rule. (n)

## **RULE 41**

### **Appeal From The Regional Trial Courts**

**Section 1. *Subject of appeal.*** — An appeal may be taken from a judgment or final order that completely disposes of the 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 motion for new trial or reconsideration;
- (b) An order denying a petition for relief or any similar motion seeking relief from judgment;
- (c) An interlocutory order;
- (d) An order disallowing or dismissing an appeal;
- (e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
- (f) An order of execution;
- (g) A judgment or final order 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 an appeal therefrom; and
- (h) An order dismissing an action without prejudice.

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65. (n)

**Section 2. *Modes of appeal.*** —

- (a) *Ordinary appeal.* — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where law on these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) *Petition for review.* — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) *Appeal by certiorari.* — In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with the Rule 45. (n)

**Section 3.** *Period of ordinary appeal.* — The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.

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. (n)

**Section 4.** *Appellate court docket and other lawful fees.* — Within the period for taking an appeal, the appellant shall pay to the clerk of the court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees. Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal. (n)

**Section 5.** *Notice of appeal.* — The notice of appeal shall indicate the parties to the appeal, specify the judgment or final order or part thereof appealed from, specify the court to which the appeal is being taken, and state the material dates showing the timeliness of the appeal. (4a)

**Section 6.** *Record on appeal; form and contents thereof.* — The full names of all the parties to the proceedings shall be stated in the caption of the record on appeal and it shall include the judgment or final order from which the appeal is taken and, in chronological order, copies of only such pleadings, petitions, motions and all interlocutory orders as are related to the appealed judgment or final order for the proper understanding of the issue involved, together with such data as will show that the appeal was perfected on time. If an issue of fact is to be raised on appeal, the record on appeal shall include by reference all the evidence, testimonial and documentary, taken upon the issue involved. The reference shall specify the documentary evidence by the exhibit numbers or letters by which it was identified when admitted or offered at the hearing, and the testimonial evidence by the names of the corresponding witnesses. If the whole testimonial and documentary evidence in the case is to be included, a statement to that effect will be sufficient without mentioning the names of the witnesses or the numbers or letters of exhibits. Every record on appeal exceeding twenty (20) pages must contain a subject index. (6a)

**Section 7.** *Approval of record on appeal.* — Upon the filing of the record on appeal for approval and if no objection is filed by the appellee within five (5) days from receipt of a copy thereof, the trial court may approve it as presented or upon its own motion or at the instance of the appellee, may direct its amendment by the inclusion of any omitted matters which are deemed essential to the determination of the issue of law or fact involved in the appeal. If the trial court orders the amendment of the record, the appellant, within the time limited in the order, or such extension thereof as may be granted, or if no time is fixed by the order within ten (10) days from receipt thereof, shall redraft the record by including therein, in their proper chronological sequence, such additional matters as the court may have directed him to incorporate, and shall thereupon submit the redrafted record for approval, upon notice to the appellee, in like manner as the original draft. (7a)

**Section 8.** *Joint record on appeal.* — Where both parties are appellants, they may file a joint record on appeal within the time fixed by section 3 of this Rule, or that fixed by the court. (8a)

**Section 9.** *Perfection of appeal; effect thereof.* — A party's appeal by notice of appeal is deemed perfected as to him upon the filing of the notice of appeal in due time.

A party's appeal by record on appeal is deemed perfected as to him with respect to the subject matter thereof upon the approval of the record on appeal filed in due time.

In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.

In appeals by record on appeal, the court loses jurisdiction only over the subject matter thereof upon the approval of the records on appeal filed in due time and the expiration of the appeal of the other parties.

In either case, prior to the transmittal of the original record or the record on appeal, the court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with 2 of Rule 39, and allow withdrawal of the appeal. (9a)

**Section 10. *Duty of clerk of court of the lower court upon perfection of appeal.*** — Within thirty (30) days after perfection of all the appeals in accordance with the preceding section, it shall be the duty of the clerk of court of the lower court:

- (a) To verify the correctness of the original record or the record on appeal, as the case may be aid to make certification of its correctness;
- (b) To verify the completeness of the records that will be, transmitted to the appellate court;
- (c) If found to be incomplete, to take such measures as may be required to complete the records, availing of the authority that he or the court may exercise for this purpose; and
- (d) To transmit the records to the appellate court.

If the efforts to complete the records fail, he shall indicate in his letter of transmittal the exhibits or transcripts not included in the records being transmitted to the appellate court, the reasons for their non-transmittal, and the steps taken or that could be taken to have them available.

The clerk of court shall furnish the parties with copies of his letter of transmittal of the records to the appellate court. (10a)

**Section 11. *Transcript.*** — Upon the perfection of the appeal, the clerk shall immediately direct the stenographers concerned to attach to the record of the case five (5) copies of the transcripts of the testimonial evidence referred to in the record on appeal. The stenographers concerned shall transcribe such testimonial evidence and shall prepare and affix to their transcripts an index containing the names of the witnesses and the pages wherein their testimonies are found, and a list of the exhibits and the pages wherein each of them appears to have been offered and admitted or rejected by the trial court. The transcripts shall be transmitted to the clerk of the trial court who shall thereupon arrange the same in the order in which the witnesses testified at the trial, and shall cause the pages to be numbered consecutively. (12a)

**Section 12. *Transmittal.*** — The clerk of the trial court shall transmit to the appellate court the original record or the approved record on appeal within thirty (30) days from the perfection of the appeal, together with the proof of payment of the appellate court docket and other lawful fees, a certified true copy of the minutes of the proceedings, the order of approval, the certificate of correctness, the original documentary evidence referred to therein, and the original and three (3) copies of the transcripts. Copies of the transcripts and certified true copies of the documentary evidence shall remain in the lower court for the examination of the parties. (11a)

**Section 13. Dismissal of appeal.** — Prior to the transmittal of the original record or the record on appeal to the appellate court, the trial court may *motu proprio* or on motion dismiss the appeal for having been taken out of time. (14a)

## **RULE 42**

### **Petition for Review From the Regional Trial Courts to the Court of Appeals**

**Section 1. How appeal taken; time for filing.** — A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of P500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs 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. (n)

**Section 2. Form and contents.** — The petition shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the specific material dates showing that it was filed on time; (c) set forth concisely a statement of the matters involved, the issues raised, the specification of errors of fact or law, or both, allegedly committed by the Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal; (d) be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition.

The petitioner shall also submit together with the petition a certification under oath that he 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 must state the status of the same; and if he 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 undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom. (n)

**Section 3. 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. (n)

**Section 4. Action on the petition.** — The Court of Appeals may require the respondent to file a comment on the petition, not a motion to dismiss, 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 insubstantial to require consideration. (n)

**Section 5. Contents of comment.** — The comment of the respondent shall be filed in seven (7) legible copies, accompanied by certified true copies of such material portions of the record referred to therein together with other supporting papers and shall (a) state whether or not he accepts the statement of

matters involved in the petition; (b) point out such insufficiencies or inaccuracies as he believes exist in petitioner's statement of matters involved but without repetition; and (c) state the reasons why the petition should not be given due course. A copy thereof shall be served on the petitioner. (a)

**Section 6. *Due course.*** — If upon the filing of the comment or such other pleadings as the court may allow or require, or after the expiration of the period for the filing thereof without such comment or pleading having been submitted, the Court of Appeals finds *prima facie* that the lower court has committed an error of fact or law that will warrant a reversal or modification of the appealed decision, it may accordingly give due course to the petition. (n)

**Section 7. *Elevation of record.*** — Whenever the Court of Appeals deems it necessary, it may order the clerk of court of the Regional Trial Court to elevate the original record of the case including the oral and documentary evidence within fifteen (15) days from notice. (n)

**Section 8. *Perfection of appeal; effect thereof.*** — (a) Upon the timely filing of a petition for review and the payment of the corresponding docket and other lawful fees, the appeal is deemed perfected as to the petitioner.

The Regional Trial Court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.

However, before the Court of Appeals gives due course to the petition, the Regional Trial Court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with section 2 of Rule 39, and allow withdrawal of the appeal. (9a, R41)

(b) Except in civil cases decided under the Rule on Summary Procedure, the appeal shall stay the judgment or final order unless the Court of Appeals, the law, or these Rules shall provide otherwise. (a)

**Section 9. *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 itself. (n)

## **RULE 43**

### **Appeals From the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals**

**Section 1. *Scope.*** — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Invention Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. (n)

**Section 2. *Cases not covered.*** — This Rule shall not apply to judgments or final orders issued under the Labor Code of the Philippines. (n)

**Section 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. (n)

**Section 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 effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or 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. (n)

**Section 5. *How appeal taken.*** — Appeal shall be taken by filing a verified petition for review in seven (7) legible copies with the Court of Appeals, with proof of service of a copy thereof on the adverse party and on the court or 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 sum of P500.00 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. (n)

**Section 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 section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein. (2a)

**Section 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. (n)

**Section 8. *Action on the petition.*** — The Court of Appeals may require the respondent to file a comment on the petition not a motion to dismiss, 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. (6a)

**Section 9. *Contents of comment.*** — The comment shall be filed within ten (10) days from notice in seven (7) 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)

**Section 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 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 court or agency concerned, when supported by substantial evidence, shall be binding on the Court of Appeals. (n)

**Section 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 court or 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. (8a)

**Section 12. *Effect of appeal.*** — The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed unless the Court of Appeals shall direct otherwise upon such terms as it may deem just. (10a)

**Section 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. (n)

Procedure in the Court of Appeals

## **RULE 44**

### **Ordinary Appealed Cases**

**Section 1. *Title of cases.*** — In all cases appealed to the Court of Appeals under Rule 41, 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. (1a, R46)

**Section 2. *Counsel and guardians.*** — The counsel and guardians *ad litem* of the parties in the court of origin shall be respectively considered as their counsel and guardians *ad litem* in the Court of Appeals. When others appear or are appointed, notice thereof shall be served immediately on the adverse party and filed with the court. (2a, R46)

**Section 3. *Order of transmittal of record.*** — If the original record or the record on appeal is not transmitted to the Court of Appeals within thirty (30) days after the perfection of the appeal, either party may file a motion with the trial court, with notice to the other, for the transmittal of such record or record on appeal. (3a, R46)

**Section 4. *Docketing of case.*** — Upon receiving the original record or the record on appeal and the accompanying documents and exhibits transmitted by the lower court, as well as the proof of payment of the docket and other lawful fees, the clerk of court of the Court of Appeals shall docket the case and notify the parties thereof. (4a, R46)

Within ten (10) days from receipt of said notice, the appellant, in appeals by record on appeal, shall file with the clerk of court seven (7) clearly legible copies of the approved record on appeal, together with the proof of service of two (2) copies thereof upon the appellee.

Any unauthorized alteration, omission or addition in the approved record on appeal shall be a ground for dismissal of the appeal. (n)

**Section 5. *Completion of record.*** — Where the record of the docketed case is incomplete, the clerk of court of the Court of Appeals shall so inform said court and recommend to it measures necessary to complete the record. It shall be the duty of said court to take appropriate action towards the completion of the record within the shortest possible time. (n)

**Section 6. *Dispensing with complete record.*** — Where the completion of the record could not be accomplished within a sufficient period allotted for said purpose due to insuperable or extremely difficult causes, the court, on its own motion or on motion of any of the parties, may declare that the record and its accompanying transcripts and exhibits so far available are sufficient to decide the issues raised in the appeal, and shall issue an order explaining the reasons for such declaration. (n)

**Section 7. *Appellant's brief.*** — It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee. (10a, R46)

**Section 8. *Appellee's brief.*** — Within forty-five (45) days from receipt of the appellant's brief, the appellee shall file with the court seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellant. (11a, R46)

**Section 9. *Appellant's reply brief.*** — Within twenty (20) days from receipt of the appellee's brief, the appellant may file a reply brief answering points in the appellee's brief not covered in his main brief. (12a, R46)

**Section 10. *Time of filing memoranda in special cases.*** — In *certiorari*, prohibition, mandamus, *quo warranto* and *habeas corpus* cases, the parties shall file in lieu of briefs, their respective memoranda within a non-extendible period of thirty (30) days from receipt of the notice issued by the clerk that all the evidence, oral and documentary, is already attached to the record. (13a, R46)

The failure of the appellant to file his memorandum within the period therefor may be a ground for dismissal of the appeal. (n)

**Section 11. *Several appellants or appellees or several counsel for each party.*** — Where there are several appellants or appellees, each counsel representing one or more but not all of them shall be served with only one copy of the briefs. When several counsel represent one appellant or appellee, copies of the brief may be served upon any of them. (14a, R46)

**Section 12. *Extension of time for filing briefs.*** — Extension of time for the filing of briefs will not be allowed, except for good and sufficient cause, and only if the motion for extension is filed before the expiration of the time sought to be extended. (15, R46)

**Section 13. *Contents of appellant's brief.*** — The appellant's brief shall contain, in the order herein indicated, the following:

(a) A subject index of the matter in the brief with a digest of the arguments 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 intended to be urged, which errors shall be separately, distinctly and concisely stated 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," a clear and concise statement in a narrative form of the facts admitted by both parties and of those in controversy, together with the substance of the proof relating thereto in sufficient detail to make it clearly intelligible, with page references to the record;

(e) A clear and concise statement of the issues of fact or law to be submitted, to the court for its judgment;

(f) Under the heading "Argument," 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;

(g) Under the heading "Relief," a specification of the order or judgment which the appellant seeks; and

(h) 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. (16a, R46)

**Section 14.** *Contents of appellee's brief.* — The appellee's brief shall contain, in the order herein indicated the following:

(a) A subject index of the matter in the brief with a digest of the arguments and 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 accepts the statement of facts in the appellant's brief, or under the heading "Counter-Statement of Facts," he shall point out such insufficiencies or inaccuracies as he 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 "Argument," the appellee shall set forth his 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. (17a, R46)

**Section 15.** *Questions that may be raised on appeal.* — Whether or not the appellant has filed a motion for new trial in the court below he may include in his 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. (18, R46)

## **RULE 45**

### **Appeal by *Certiorari* to the Supreme Court**

**Section 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 shall raise only questions of law which must be distinctly set forth. (1a, 2a)

**Section 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. (1a, 5a)

**Section 3. *Docket and other lawful fees; proof of service of petition.*** — Unless he 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 amount of P500.00 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. (1a)

**Section 4. *Contents of petition.*** — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner and 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 the last paragraph of section 2, Rule 42. (2a)

**Section 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 without merit, or is prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration. (3a)

**Section 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 thereof. 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. (4a)

**Section 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 therefor. (n)

**Section 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. (2a)

**Section 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 death, *reclusion perpetua* or life imprisonment. (n)

## **RULE 46**

### **Original Cases**

**Section 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. (1a)

**Section 2.** *To what actions applicable.* — This Rule shall apply to original actions for *certiorari*, prohibition, mandamus and *quo warranto*.

Except as otherwise provided, the actions for annulment of judgment shall be governed by Rule 47, for *certiorari*, prohibition and mandamus by Rule 65, and for *quo warranto* by Rule 66. (n)

**Section 3.** *Contents and filing of petition; effect of noncompliance 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 Rule 65, 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 seven (7) 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 duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his 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 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 must state the status of the same; and if he 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 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 amount of P500.00 for costs at the time of the filing of the petition.

The failure of the petitioner to comply any of the requirements shall be sufficient ground for the dismissal of the petition. (n; Bar Matter No. 803, 21 July 1998)

**Section 4.** *Jurisdiction over person of respondent, how acquired.* — The court shall acquire jurisdiction over the person of the respondent by the service on him of its order or resolution indicating its initial action on the petition or by his voluntary submission to such jurisdiction. (n)

**Section 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. (n)

**Section 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 issue to any of its members or to an appropriate court, agency or office. (n)

**Section 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. (n)

## **RULE 47**

### **Annulment of Judgments of Final Orders and Resolutions**

**Section 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. (n)

**Section 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. (n)

**Section 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. (n)

**Section 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 seven (7) 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 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 must state the status of the same, and if he 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 undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom. (n)

**Section 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. (n)

**Section 6. *Procedure.*** — The procedure in ordinary civil cases shall be observed. Should 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. (n)

**Section 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. (n)

**Section 8. *Suspension prescriptive period.*** — The prescriptive period for the refiled of the aforesaid original action shall be deemed suspended from the filing of such 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 plaintiff in the original action. (n)

**Section 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. (n)

**Section 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. 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. (n)

## **RULE 48**

### **Preliminary Conference**

**Section 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. (Rule 7, CA Internal Rules) (n)

**Section 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. (n)

**Section 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. (n)

## **RULE 49**

### **Oral Argument**

**Section 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. (n)

The oral argument shall be limited to such matters as the court may specify in its order or resolution. (1a, R48)

**Section 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. (n)

**Section 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. (29, R49)

## **RULE 50**

### **Dismissal of Appeal**

**Section 1.** *Grounds for dismissal of appeal.* — 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) Failure of the record on appeal to show on its face that the appeal was taken within the period fixed by these Rules;

(b) Failure to file the notice of appeal or the record on appeal within the period prescribed by these Rules;

(c) Failure of the appellant to pay the docket and other lawful fees as provided in section 5, Rule 40 and section 4 of Rule 41; (Bar Matter No. 803, 17 February 1998)

(d) Unauthorized alterations, omissions or additions in the approved record on appeal as provided in section 4 of Rule 44;

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules;

(f) Absence of specific assignment of errors in the appellant's brief, or of page references to the record as required in section 13, paragraphs (a), (c), (d) and (f) of Rule 44;

(g) 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;

(h) Failure of the appellant to appear at the preliminary conference under Rule 48 or to comply with orders, circulars, or directives of the court without justifiable cause; and

(i) The fact that the order or judgment appealed from is not appealable. (1a)

**Section 2.** *Dismissal of improper appeal to the Court of Appeals.* — An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed. (n)

An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright. (3a)

**Section 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. (4a)

## **RULE 51**

### **Judgment**

**Section 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. (n)

**Section 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. (n)

**Section 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. (2a)

**Section 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. (3a)

**Section 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. (Sec. 40, BP Blg. 129) (n)

**Section 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. (5a)

**Section 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. (6)

**Section 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. (7a)

**Section 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. (n)

**Section 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. (2a, R36)

**Section 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. (n)

## **RULE 52**

### **Motion for Reconsideration**

**Section 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. (n)

**Section 2. *Second motion for reconsideration.*** — No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained. (n)

**Section 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. (n)

**Section 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. (n)

## **RULE 53**

### **New Trial**

**Section 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. (1a)

**Section 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. (2a)

**Section 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. (n)

**Section 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. (3a)

## **RULE 54**

### **Internal Business**

**Section 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 the Supreme Court. (1a)

**Section 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. (Sec. 11, first par. of BP Blg. 129, as amended by Sec. 6 of EO 33). (3a)

## **RULE 55**

### **Publications of Judgments and Final Resolutions**

**Section 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. (1a)

**Section 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. (Sec. 22a, R.A. No. 296) (n)

**Section 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. (Sec. 23a, R.A. No. 296) (n)

## Procedure In The Supreme Court

### RULE 56

#### A. Original Cases

**Section 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. (n)

**Section 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 Rules 46, 48, 49, 51, 52 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) Eighteen (18) 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 Rules 139-B, as amended. (n)

#### B. Appealed Cases

**Section 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 death, *reclusion perpetua* or life imprisonment. (n)

**Section 4. Procedure.** — The appeal shall be governed by and disposed of in accordance with the applicable provisions of the Constitution, laws, Rules 45, 48, sections 1, 2, and 5 to 11 of Rule 51, 52 and this Rule. (n)

**Section 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. (n)

**Section 6.** *Disposition of improper appeal.* — Except as provided in section 3, Rule 122 regarding appeals in criminal cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment, 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. (n)

**Section 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.

## Provisional Remedies

## RULE 57

### Preliminary Attachment

**Section 1.** *Grounds upon which attachment may issue.* — At the commencement of the action or at any time before entry of judgment, a 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 creditors;
- (b) In an action for money or property embezzled or fraudulently misapplied or converted to his 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 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 a 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 property, or is about to do so, with intent to defraud his 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)

**Section 2. Issuance and contents of order.** — An order of attachment may be issued either *ex parte* or upon motion with notice and hearing by the court in which the action is pending, or by the Court of Appeals or the Supreme Court, and 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 deposit or gives a bond as hereinafter provided 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)

**Section 3. Affidavit and bond required.** — An order of attachment shall be granted only when it appears by the affidavit of the applicant, or of some other person who personally knows the facts, that a sufficient cause of action exists, that the case is one of those mentioned in section 1 hereof, that there is no other sufficient security for the claim sought to be enforced by the action, and that the amount due to the applicant, or the value of the property the possession of which he is entitled to recover, is as much as the sum for which the order is granted above all legal counterclaims. The affidavit, and the bond required by the next succeeding section, must be duly filed with the court before the order issues. (3a)

**Section 4. Condition of applicant's bond.** — The party applying for the order must thereafter give a bond executed to the adverse party in the amount fixed by the court in its order granting the issuance of the writ, conditioned that the latter will pay all the costs which may be adjudged to the adverse party and all damages which he may sustain by reason of the attachment, if the court shall finally adjudge that the applicant was not entitled thereto. (4a)

**Section 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 from which the writ is issued, 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. No levy on attachment pursuant to the writ issued under section 2 hereof shall be enforced unless it is preceded, or contemporaneously accompanied, by service of summons, together with a copy of the complaint, the application for attachment the applicant's affidavit and bond, and the order and writ of attachment, on the defendant within the Philippines.

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)

**Section 6. Sheriff's return.** — After enforcing the writ, the sheriff must likewise without delay make a return thereon to the court from which the writ issued, with a full statement of his 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. (6a)

**Section 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, or growing crops thereon, or any interest therein, standing upon the record of the registry of deeds of the province in the name of the party against whom 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 person, 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 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 must 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 capable of manual delivery, by taking and safely keeping it in his custody, after issuing the corresponding receipt therefor.

(c) Stocks or shares, or an interest in stocks or shares, of any corporation or company, by leaving with the president or managing agent thereof, 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, 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 possession or under his control, such credits or other personal property, or with his agent, a copy of the writ, and notice that the debts owing by him to the party against whom attachment is issued, and the credits and other personal property in his possession, or under his control, belonging to said party, are attached in pursuance of such writ;

(e) The interest of the party against whom attachment is issued in 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 of said notice shall also be filed in the office of the clerk of 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. (7a)

**Section 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 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. (8a)

**Section 9.** *Effect of attachment of interests 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. (9a)

**Section 10.** *Examination of party whose property is attached and persons indebted to him or controlling his property; delivery of property to sheriff.* — Any person owing debts to the party whose property is attached or having in his possession or under his 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 on oath respecting the same. The party whose property is attached may also be required to attend for the purpose of giving information respecting his property, and may be examined on 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. (10a)

**Section 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. (11a)

**Section 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 behalf, may move for the discharge of the attachment wholly or in part on the security given. The court shall, after due notice and hearing, order the discharge of the attachment if the movant makes a cash deposit, or files a counter-bond executed to the attaching party with the clerk of the court where the application is made, in an 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 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)

**Section 13.** *Discharge of attachment on other grounds.* — The party whose property has been ordered attached may file a motion 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 attachment is excessive, the discharge shall be limited to the excess. If the motion be made on affidavits on the part of the movant but not otherwise, the attaching party may oppose the motion by counter-affidavits or other evidence in addition to that on which the attachment was made. After due notice and hearing, the court shall order the setting aside or the corresponding discharge of the attachment if it appears that it was improperly or irregularly issued or enforced, or that the bond is insufficient, or that the attachment is excessive, and the defect is not cured forthwith. (13a)

**Section 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 agent, and such person makes an affidavit of his 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 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 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 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. (14a)

**Section 15.** *Satisfaction of judgment out of property attached, return of sheriff.* — If judgment be recovered by the attaching party and execution issue 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 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 proceedings under this section and furnish the parties with copies thereof. (15a)

**Section 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 must proceed to collect such balance as upon ordinary execution. Whenever the judgment shall have been paid, the sheriff, upon reasonable demand, must return to the judgment obligor the attached property remaining in his hands, and any proceeds of the sale of the property attached not applied to the judgment. (16a)

**Section 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. (17a)

**Section 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 assignee. If the judgment is in favor of the party against whom attachment was issued, the whole sum deposited must be refunded to him or his assignee. (18a)

**Section 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. (19a)

**Section 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 appeal is perfected or before the judgment becomes executory, with due notice to the attaching party and his surety or sureties setting forth the facts showing his 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 be favorable to the party against whom the attachment was issued he 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 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 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. (20a)

## **RULE 58**

### **Preliminary Injunction**

**Section 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. (1a)

**Section 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. (2a)

**Section 3.** *Grounds for issuance of preliminary injunction.* — A preliminary injunction may be granted when it is established:

- (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance 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) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
- (c) That 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. (3a)

**Section 4.** *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 application in the action or proceeding is verified, and shows facts entitling the applicant to the relief demanded; and
- (b) Unless exempted by the court the applicant files with the court where the action or proceeding is pending, a bond executed to 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 may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued. (4a)
- (c) When an application for a writ of preliminary injunction or a temporary restraining 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. 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 affidavit and bond, upon the adverse party in the Philippines.

However, where the summons 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.

- (d) The application for a temporary restraining 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.

**Section 5. *Preliminary injunction not granted without notice; exception.*** — No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order. (Bar Matter No. 803, 17 February 1998)

However, and subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single sala court may issue *ex parte* a temporary restraining order effective for only seventy-two (72) hours from issuance but he shall immediately comply with the provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two hours provided herein.

In the event that the application for preliminary injunction is denied or not resolved within the said period, the temporary restraining order is deemed, automatically vacated. The effectivity of a temporary restraining order is not extendible without need of any judicial declaration to that effect and no court shall have authority to extend or renew the same on the same ground for which it was issued.

However, if issued by the Court of Appeals or a member thereof, the temporary restraining order shall be effective for sixty (60) days from service on the party or person sought to be enjoined. A restraining, order issued by the Supreme Court or a member thereof shall be effective until further orders. (5a)

**Section 6. *Grounds for objection to, or for motion of dissolution of, injunction or restraining order.*** — The application for injunction or restraining order may be denied, upon a showing of its insufficiency. The injunction or restraining order may also be denied, or, if granted, may be dissolved, on other grounds upon affidavits of the party or person enjoined, which may be opposed by the applicant also by affidavits. It may further be denied, or if granted, may be 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 may suffer, and the former files a bond in an amount fixed by the court conditioned that he will pay all damages which the applicant may suffer by the denial or the dissolution of the injunction or restraining order. If it appears that the extent of the preliminary injunction or restraining order granted is too great, it may be modified. (6a)

**Section 7. *Service of copies of bonds; effect of disapproval of 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 except 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 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 a bond sufficient in amount with sufficient sureties approved after justification is not filed forthwith, the injunction shall be granted or restored, as the case may be. (8a)

**Section 8. *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 20 of Rule 57. (9a)

**Section 9.** *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 of confirming the preliminary mandatory injunction. (10a)

## **RULE 59**

### **Receivership**

**Section 1.** *Appointment of receiver.* — Upon a verified application, 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, 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 it appears in an action by the mortgagee for the foreclosure of a mortgage 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 property in satisfaction of the judgment, or otherwise to carry the judgment into effect;

(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 of 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 and the receiver appointed to be subject to the control of said court. (1a)

**Section 2.** *Bond on appointment of receiver.* — Before issuing the order appointing a receiver the court shall require the applicant to file a bond executed to 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 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. (3a)

**Section 3.** *Denial of application or discharge of receiver.* — The application may be denied, or the receiver discharged, when the adverse party files a bond executed to the applicant, in an amount to be fixed by the court, to the effect that such party will pay the applicant all damages he may suffer by reason of the acts, omissions, or other matters specified in the application as ground for such appointment. The receiver may also be discharged if it is shown that his appointment was obtained without sufficient cause. (4a)

**Section 4.** *Oath and bond of receiver.* — Before entering upon his 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 will faithfully discharge his duties in the action or proceeding and obey the orders of the court. (5a)

**Section 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 except 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. (6a)

**Section 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 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 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. (7a)

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

**Section 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 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. (n)

**Section 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, after due notice to all interested parties and hearing, settle the accounts of the receiver, direct the delivery of the funds and other property in his 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)

**Section 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 20 of Rule 57. (9a)

## **RULE 60**

### **Replevin**

**Section 1. Application.** — A party praying for the recovery of possession of personal property may, at the commencement of the action or at any time before answer, apply for an order for the delivery of such property to him, in the manner hereinafter provided. (1a)

**Section 2. Affidavit and bond.** — The applicant must show by his own affidavit or that of some other person who personally knows the 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 knowledge, information, and belief ;
- (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*, or if so seized, that it is exempt from such seizure or custody; and
- (d) The actual market value of the property.

The applicant must also give a bond, executed to the adverse party in 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 may recover from the applicant in the action. (2a)

**Section 3. Order.** — Upon the filing of such affidavit and approval of the bond, the court shall issue an order and the corresponding writ of replevin, describing the personal property alleged to be wrongfully detained and requiring the sheriff forthwith to take such property into his custody. (3a)

**Section 4. Duty of the sheriff.** — Upon receiving such order, the sheriff must serve a copy thereof on the adverse party, together with a copy of the application, affidavit and bond, and must forthwith take the property, if it be in the possession of the adverse party, or his agent, and retain it in his 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 must cause the building or enclosure to be broken open and take the property into his possession. After the sheriff has taken possession of the property as herein provided, he must keep it in a secure place and shall be responsible for its delivery to the party entitled thereto upon receiving his fees and necessary expenses for taking and keeping the same. (4a)

**Section 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 cannot immediately require the return of the property, but if he does not so object, he 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 to the applicant, in double the value of the property as stated in the applicant's affidavit for the delivery thereof to the applicant, if such delivery be adjudged, and for the payment of such sum, to him as may be recovered against the adverse party, and by serving a copy of such bond on the applicant. (5a)

**Section 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 bond is objected to and found insufficient and he 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. (6a)

**Section 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 agent, and such person makes an affidavit of his title thereto, or right to the possession thereof, stating the grounds therefor, and serves such 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 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 2 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 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, and in case the sheriff is sued for damages as a result of the replevin, he 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. (7a)

**Section 8. Return of papers.** — The sheriff must file the order, with his proceedings indorsed, thereon, with the court within ten (10) days after taking the property mentioned therein. (8a)

**Section 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. (9a)

**Section 10. 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 as prescribed in section 20 of Rule 57. (10a)

## **RULE 61**

### **Support Pendente Lite**

**Section 1. Application.** — At the commencement of the proper action or proceeding, or at any time prior to the judgment or final order, 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 affidavits, depositions or other authentic documents in support thereof. (1a)

**Section 2. Comment.** — A copy of the application and all supporting documents shall be served upon the adverse party, who shall have five (5) days to comment thereon unless a different period is fixed by the court upon his motion. The comment shall be verified and shall be accompanied by affidavits, depositions or other authentic documents in support thereof. (2a, 3a)

**Section 3. Hearing.** — After the comment is filed, or after the expiration of the period for its filing, the application shall be set for hearing not more than three (3) days thereafter. The facts in issue shall be proved in the same manner as is provided for evidence on motions. (4a)

**Section 4. Order.** — The court shall determine provisionally the pertinent facts, and shall render such orders as justice and equity may require, having the 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 as early as possible. (5a)

**Section 5. 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 liability for contempt. (6a)

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 notice and hearing in the same case obtain a writ of execution to enforce his right of reimbursement against the person ordered to provide such support. (h)

**Section 6. 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 and 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. (n)

**Section 7. 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. (n)

## Special Civil Actions

### RULE 62

#### Interpleader

**Section 1. When interpleader proper.** — Whenever conflicting claims upon the same subject matter are or may be made against a person who claims no interest whatever in the subject matter, or an interest which in whole or in part is not disputed by the claimants, he may bring an action against the conflicting claimants to compel them to interplead and litigate their several claims among themselves. (1a, R63)

**Section 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. (2a, R63)

**Section 3. *Summons.*** — Summons shall be served upon the conflicting claimants, together with a copy of the complaint and order. (3, R63)

**Section 4. *Motion to dismiss.*** — Within the time for filing an answer, each claimant may file a motion to dismiss on the ground of impropriety of the interpleader action or on other appropriate grounds specified in Rule 16. The period to file the answer shall be tolled and if the motion is denied, the movant may file his answer within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial. (n)

**Section 5. *Answer and other pleadings.*** — Each claimant shall file his answer setting forth his 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 in default and thereafter render judgment barring him 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. (4a, R63)

**Section 6. *Determination.*** — After the pleadings of the conflicting claimants have been filed, and pre-trial has been conducted in accordance with the Rules, the court shall proceed to determine their respective rights and adjudicate their several claims. (5a, R63)

**Section 7. *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 or charge upon the subject matter of the action, unless the court shall order otherwise. (6a, R63)

## **RULE 63**

### **Declaratory Relief and Similar Remedies**

**Section 1. *Who may file petition.*** — Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder. (Bar Matter No. 803, 17 February 1998)

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, R64)

**Section 2. *Parties.*** — All persons who have or claim any interest which would be affected by the declaration shall be made parties; and no declaration shall, except as otherwise provided in these Rules, prejudice the rights of persons not parties to the action. (2a, R64)

**Section 3. *Notice on Solicitor General.*** — In any action which involves the validity of a statute, executive order or regulation, or any other governmental regulation, the Solicitor General shall be notified by the party assailing the same and shall be entitled to be heard upon such question. (3a, R64)

**Section 4. *Local government ordinances.*** — In any action involving the validity of a local government ordinance, the corresponding prosecutor or attorney of the local governmental unit involved shall be

similarly notified and entitled to be heard. If such ordinance is alleged to be unconstitutional, the Solicitor General shall also be notified and entitled to be heard. (4a, R64)

**Section 5. *Court action discretionary.*** — Except in actions falling under the second paragraph of section 1 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. (5a, R64)

**Section 6. *Conversion into ordinary action.*** — If before the final termination of the case, a breach or violation of an instrument or a statute, executive order or regulation, ordinance, or any other governmental regulation should take place, the action may thereupon be converted into an ordinary action, and the parties shall be allowed to file such pleadings as may be necessary or proper. (6a, R64)

## **RULE 64**

### **Review of Judgments and Final Orders or Resolutions of the Commission on Elections and the Commission on Audit**

**Section 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. (n)

**Section 2. *Mode of review.*** — A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65, except as hereinafter provided. (n; Bar Matter No. 803, 17 February 1998)

**Section 3. *Time to file petition.*** — The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial. (n)

**Section 4. *Docket and other lawful fees.*** — Upon the filing of the petition, the petitioner shall pay to the clerk of court the docket and other lawful fees and deposit the amount of P500.00 for costs. (n)

**Section 5. *Form and contents of petition.*** — The petition shall be verified and filed in eighteen (18) legible copies. The petition shall name the aggrieved party as petitioner and shall join as respondents the Commission concerned and the person or persons interested in sustaining the judgment, final order or resolution *a quo*. The petition shall state the facts with certainty, present clearly the issues involved, set forth the grounds and brief arguments relied upon for review, and pray for judgment annulling or modifying the questioned judgment, final order or resolution. Findings of fact of the Commission supported by substantial evidence shall be final and non-reviewable.

The petition shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, final order or resolution subject thereof, together with certified true copies of such material portions of the record as are referred to therein and other documents relevant and pertinent thereto. The requisite number of copies of the petition shall contain plain copies of all documents attached to the original copy of said petition.

The petition shall state the specific material dates showing that it was filed within the period fixed herein, and shall contain a sworn certification against forum shopping as provided in the third paragraph of section 3, Rule 46.

The petition shall further be accompanied by proof of service of a copy thereof on the Commission concerned and on the adverse party, and of the timely payment of docket and other lawful fees.

The failure of petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. (n)

**Section 6. *Order to comment.*** — If the Supreme Court finds the petition sufficient in form and substance, it shall order the respondents to file their comments on the petition within ten (10) days from notice thereof; otherwise, the Court may dismiss the petition outright. The Court may also dismiss the petition if it was filed manifestly for delay or the questions raised are too unsubstantial to warrant further proceedings. (n)

**Section 7. *Comments of respondents.*** — The comments of the respondents shall be filed in eighteen (18) legible copies. The original shall be accompanied by certified true copies of such material portions of the record as are referred to therein together with other supporting papers. The requisite number of copies of the comments shall contain plain copies of all documents attached to the original and a copy thereof shall be served on the petitioner.

No other pleading may be filed by any party unless required or allowed by the Court. (n)

**Section 8. *Effect of filing.*** — The filing of a petition for *certiorari* shall not stay the execution of the judgment or final order or resolution sought to be reviewed, unless the Supreme Court shall direct otherwise upon such terms as it may deem just. (n)

**Section 9. *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. (n)

## **RULE 65**

### ***Certiorari, Prohibition and Mandamus***

**Section 1. *Petition for certiorari.*** — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. (1a)

**Section 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 its or his 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, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

The petition shall likewise be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. (2a)

**Section 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 is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. (3a)

**Section 4. *When and where petition filed.*** — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days. (4a) (Bar Matter No. 803, 21 July 1998; A.M. No. 00-2-03-SC)

**Section 5. *Respondents and costs in certain cases.*** — When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents.

Unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. If the case is elevated to a higher court by either party, the public respondents shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear or participate in the proceedings therein. (5a)

**Section 6. *Order to comment.*** — If the petition is sufficient in form and substance to justify such process, the court shall issue an order requiring the respondent or respondents to comment on the petition within ten (10) days from receipt of a copy thereof. Such order shall be served on the respondents in such manner as the court may direct together with a copy of the petition and any annexes thereto.

In petitions for *certiorari* before the Supreme Court and the Court of Appeals, the provisions of section 2, Rule 56, shall be observed. Before giving due course thereto, the court may require the respondents to file their comment to, and not a motion to dismiss, the petition. Thereafter, the court may require the filing of a reply and such other responsive or other pleadings as it may deem necessary and proper. (6a)

**Section 7. *Expediting proceedings; injunctive relief.*** — The court in which the petition is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. The petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case. (7a)

**Section 8. *Proceedings after comment is filed.*** — After the comment or other pleadings required by the court are filed, or the time for the filing thereof has expired, the court may hear the case or require the parties to submit memoranda. If after such hearing or submission of memoranda or the expiration of the period for the filing thereof the court finds that the allegations of the petition are true, it shall render judgment for the relief prayed for or to which the petitioner is entitled.

The court, however, may 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. (8a)

**Section 9. *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 section 1 of Rule 39. (9a)

## **RULE 66**

### ***Quo Warranto***

**Section 1. *Action by Government against individuals.*** — An action for the usurpation of a public office, position or franchise may be commenced by a verified petition brought in the name of the Republic of the Philippines against:

- (a) A person who usurps, intrudes into, or unlawfully holds or exercises a public office, position or franchise;
- (b) A public officer who does or suffers an act which, by the provision of law, constitutes a ground for the forfeiture of his office; or
- (c) An association which acts as a corporation within the Philippines without being legally incorporated or without lawful authority so to act. (1a)

**Section 2.** *When Solicitor General or public prosecutor must commence action.* — The Solicitor General or a public prosecutor, when directed by the President of the Philippines, or when upon complaint or otherwise he has good reason to believe that any case specified in the preceding section can be established by proof, must commence such action. (3a)

**Section 3.** *When Solicitor General or public prosecutor may commence action with permission of court.* — The Solicitor General or a public prosecutor may, with the permission of the court in which the action is to be commenced, bring such an action at the request and upon the relation of another person; but in such case the officer bringing it may first require an indemnity for the expenses and costs of the action in an amount approved by and to be deposited in the court by the person at whose request and upon whose relation the same is brought. (4a)

**Section 4.** *When hearing had on application for permission to commence action.* — Upon application for permission to commence such action in accordance with the next preceding section, the court shall direct that notice be given to the respondent so that he may be heard in opposition thereto; and if permission is granted, the court shall issue an order to that effect, copies of which shall be served on all interested parties, and the petition shall then be filed within the period ordered by the court. (5a)

**Section 5.** *When an individual may commence such an action.* — A person claiming to be entitled to a public office or position usurped or unlawfully held or exercised by another may bring an action therefor in his own name. (6)

**Section 6.** *Parties and contents of petition against usurpation.* — When the action is against a person for usurping a public office, position or franchise, the petition shall set forth the name of the person who claim to be entitled thereto, if any, with an averment of his right to the same and that the respondent is unlawfully in possession thereof. All persons who claim to be entitled to the public office, position or franchise may be made parties, and their respective rights to such public office, position or franchise determined, in the same action. (7a)

**Section 7.** *Venue.* — An action under the preceding six sections can be brought only in the Supreme Court, the Court of Appeals, or in the Regional Trial Court exercising jurisdiction over the territorial area where the respondent or any of the respondents resides, but when the Solicitor General commences the action, it may be brought in a Regional Trial Court in the City of Manila, in the Court of Appeals, or in the Supreme Court. (8a)

**Section 8.** *Period for pleadings and proceedings may be reduced; action given precedence.* — The court may reduce the period provided by these Rules for filing pleadings and for all other proceedings in the action in order to secure the most expeditious determination of the matters involved therein consistent with the rights of the parties. Such action may be given precedence over any other civil matter pending in the court. (9a)

**Section 9.** *Judgment where usurpation found.* — When the respondent is found guilty of usurping into, intruding into, or unlawfully holding or exercising a public office, position or franchise, judgment shall be rendered that such respondent be ousted and altogether excluded therefrom, and that the petitioner or relator, as the case may be, recover his costs. Such further judgment may be rendered determining the respective rights in and to the public office, position or franchise of all the parties to the action as justice requires. (10a)

**Section 10.** *Rights of persons adjudged entitled to public office; delivery of books and papers; damages.* — If judgment be rendered in favor of the person averred in the complaint to be entitled to the public office he may, after taking the oath of office and executing any official bond required by law, take upon himself the execution of the office, and may immediately thereafter demand of the respondent all the books and papers in the respondent's custody or control appertaining to the office to which the judgment relates. If the respondent refuses or neglects to deliver any book or paper pursuant to such demand, he

may be punished for contempt as having disobeyed a lawful order of the court. The person adjudged entitled to the office may also bring action against the respondent to recover the damages sustained by such person by reason of the usurpation. (15a)

**Section 11. *Limitations.*** — Nothing contained in this Rule shall be construed to authorize an action against a public officer or employee for his ouster from office unless the same be commenced within one (1) year after the cause of such ouster, or the right of the petitioner to hold such office or position, arose, nor to authorize an action for damages in accordance with the provisions of the next preceding section unless the same be commenced within one (1) year after the entry of the judgment establishing the petitioner's right to the office in question. (16a)

**Section 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 petitioner, the relator, or the respondent, or the person or persons claiming to be a corporation, or may apportion the costs, as justice requires. (17a)

## **RULE 67**

### **Expropriation**

**Section 1. *The complaint.*** — The right of eminent domain shall be exercised by the filing of a verified complaint which shall state with certainty the right and purpose of expropriation, describe the real or personal property sought to be expropriated, 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. If the title to any property sought to be expropriated appears to be in the Republic of the Philippines, although occupied by private individuals, or if the title is otherwise obscure or doubtful so that the plaintiff cannot with accuracy or certainty specify who are the real owners, averment to that effect shall be made in the complaint. (1a)

**Section 2. *Entry of plaintiff upon depositing value with authorized government depositary.*** — Upon the filing of the complaint or at any time thereafter and after due notice to the defendant, the plaintiff shall have the right to take or enter upon the possession of the real property involved if he deposits with the authorized government depositary an amount equivalent to the assessed value of the property for purposes of taxation to be held by such bank subject to the orders of the court. Such deposit shall be in money, unless in lieu thereof the court authorizes the deposit of a certificate of deposit of a government bank of the Republic of the Philippines payable on demand to the authorized government depositary.

If personal property is involved, its value shall be provisionally ascertained and the amount to be deposited shall be promptly fixed by the court.

After such deposit is made the court shall order the sheriff or other proper officer to forthwith place the plaintiff in possession of the property involved and promptly submit a report thereof to the court with service of copies to the parties. (2a)

**Section 3. *Defenses and objections.*** — If a defendant has no objection or defense to the action or the taking of his property, he may file and serve a notice of appearance and a manifestation to that effect, specifically designating or identifying the property in which he claims to be interested, within the time stated in the summons. Thereafter, he shall be entitled to notice of all proceedings affecting the same.

If a defendant has any objection to the filing of or the allegations in the complaint, or any objection or defense to the taking of his property, he shall serve his answer within the time stated in the summons. The answer shall specifically designate or identify the property in which he claims to have an interest,

state the nature and extent of the interest claimed, and adduce all his objections and defenses to the taking of his property. No counterclaim, cross-claim or third-party complaint shall be alleged or allowed in the answer or any subsequent pleading.

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 the filing thereof. However, at the trial of the issue of just compensation whether or not a defendant has previously appeared or answered, he may present evidence as to the amount of the compensation to be paid for his property, and he may share in the distribution of the award. (n)

**Section 4. *Order of expropriation.*** — If the objections to and the defenses against the right of the plaintiff to expropriate the property are overruled, or when no party appears to defend as required by this Rule, the court may issue an order of expropriation declaring that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or 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 came first.

A final order sustaining the right to expropriate the property may be appealed by any party aggrieved thereby. Such appeal, however, shall not prevent the court from determining the just compensation to be paid.

After the rendition of such an order, the plaintiff shall not be permitted to dismiss or discontinue the proceeding except on such terms as the court deems just and equitable. (4a)

**Section 5. *Ascertainment of compensation.*** — Upon the rendition of the order of expropriation, the court shall appoint not more than three (3) competent and disinterested persons as commissioners to ascertain and report to the court the just compensation for the property sought to be taken. The order of appointment shall designate the time and place of the first session of the hearing to be held by the commissioners and specify the time within which their report shall be submitted to the court.

Copies of the order shall be served on the parties. Objections to the appointment of any of the commissioners shall be filed with the court within ten (10) days from service, and shall be resolved within thirty (30) days after all the commissioners shall have received copies of the objections. (5a)

**Section 6. *Proceedings by commissioners.*** — Before entering upon the performance of their duties, the commissioners shall take and subscribe an oath that they will faithfully perform their duties as commissioners, which oath shall be filed in court with the other proceedings in the case. Evidence may be introduced by either party before the commissioners who are authorized to administer oaths on hearings before them, and the commissioners shall, unless the parties consent to the contrary, after due notice to the parties, to attend, view and examine the property sought to be expropriated and its surroundings, and may measure the same, after which either party may, by himself or counsel, argue the case. 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 use or purpose of the property taken, the operation of its franchise by the corporation or the carrying on of the business of the corporation or person taking the property. But in no case shall the consequential benefits assessed exceed the consequential damages assessed, or the owner be deprived of the actual value of his property so taken. (6a)

**Section 7. *Report by commissioners and judgment thereupon.*** — The court may order the commissioners to report when any particular portion of the real estate shall have been passed upon by them, and may render judgment upon such partial report, and direct the commissioners to proceed with their work as to subsequent portions of the property sought to be expropriated, and may from time to time so deal with such property. The commissioners shall make a full and accurate report to the court of all their proceedings, and such proceedings shall not be effectual until the court shall have accepted their

report and rendered judgment in accordance with their recommendations. Except as otherwise expressly ordered by the court, such report shall be filed within sixty (60) days from the date the commissioners were notified of their appointment, which time may be extended in the discretion of the court. Upon the filing of such report, the clerk of the court shall serve copies thereof on all interested parties, with notice that they are allowed ten (10) days within which to file objections to the findings of the report, if they so desire. (7a)

**Section 8. *Action upon commissioners' report.*** — Upon the expiration of the period of ten (10) days referred to in the preceding section, or even before the expiration of such period but after all the interested parties have filed their objections to the report or their statement of agreement therewith, the court may, after hearing, accept the report and render judgment in accordance therewith, or, for cause shown, it may recommit the same to the commissioners for further report of facts, or it may set aside the report and appoint new commissioners; or it may accept the report in part and reject it in part and it may make such order or render such judgment as shall secure to the plaintiff the property essential to the exercise of his right of expropriation, and to the defendant just compensation for the property so taken. (8a)

**Section 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. (9a)

**Section 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 him 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 have taken immediate possession thereof under the provisions of section 2 hereof. If the defendant and his 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 thereof to the defendant or the person ultimately adjudged entitled thereto. (10a)

**Section 11. *Entry not delayed by appeal; effect of reversal.*** — 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 delayed by an appeal 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)

**Section 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. (12a)

**Section 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. (13a)

**Section 14.** *Power of guardian in such proceedings.* — The guardian or guardian *ad litem* of a minor or of a person judicially declared to be incompetent may, with the approval of the court first had, do and perform on behalf of his ward any act, matter, or thing respecting the expropriation for public use or purpose of property belonging to such minor or person judicially declared to be incompetent, which such minor or person judicially declared to be incompetent could do in such proceedings if he were of age or competent. (14a)

## **RULE 68**

### **Foreclosure of Real Estate Mortgage**

**Section 1.** *Complaint in action for foreclosure.* — In an action for the foreclosure of a mortgage or other encumbrance upon real estate, the complaint shall set forth the date and due execution of the mortgage; its assignments, if any; the names and residences of the mortgagor and the mortgagee; a description of the mortgaged property; a statement of the date of the note or other documentary evidence of the obligation secured by the mortgage, the amount claimed to be unpaid thereon; and the names and residences of all persons having or claiming an interest in the property subordinate in right to that of the holder of the mortgage, all of whom shall be made defendants in the action. (1a)

**Section 2.** *Judgment on foreclosure for payment or sale.* — If upon the trial in such action the court shall find the facts set forth in the complaint to be true, it shall ascertain the amount due to the plaintiff upon the mortgage debt or obligation, including interest and other charges as approved by the court, and costs, and shall render judgment for the sum so found due and order that the same be paid to the court or to the judgment obligee within a period of not less than ninety (90) days nor more than one hundred twenty (120) days from the entry of judgment, and that in default of such payment the property shall be sold at public auction to satisfy the judgment. (2a)

**Section 3.** *Sale of mortgaged property; effect.* — When the defendant, after being directed to do so as provided in the next preceding section, fails to pay the amount of the judgment within the period specified therein, the court, upon motion, shall order the property to be sold in the manner and under the provisions of Rule 39 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, and when confirmed by an order of the court, also upon motion, it shall operate to divest the rights in the property of all the parties to the action and to vest their rights in the purchaser, subject to such rights of redemption as may be allowed by law.

Upon the finality of the order of confirmation or upon the expiration of the period of redemption when allowed by law, the purchaser at the auction sale or last redemptioner, if any, shall be entitled to the possession of the property unless a third party is actually holding the same adversely to the judgment obligor. The said purchaser or last redemptioner may secure a writ of possession, upon motion, from the court which ordered the foreclosure. (3a)

**Section 4.** *Disposition of proceeds of sale.* — The amount realized from the foreclosure sale of the mortgaged property shall, after deducting the costs of the sale, be paid to the person foreclosing the mortgage, and when there shall be any balance or residue, after paying off the mortgage debt due, the same shall be paid to junior encumbrancers in the order of their priority, to be ascertained by the court, or if there be no such encumbrancers or there be a balance or residue after payment to them, then to the mortgagor or his duly authorized agent, or to the person entitled to it. (4a)

**Section 5.** *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 all due as provided in the judgment as soon as a sufficient portion of the property has been sold to pay the total amount and the costs due, the sale shall terminate; and

afterwards as often as more becomes due for principal or interest and other valid charges, the court may, on motion, order more to be sold. 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 debt and costs shall be paid, if the proceeds of the sale be sufficient therefor, there being a rebate of interest where such rebate is proper. (5a)

**Section 6. *Deficiency judgment.*** — If upon the sale of any real property as provided in the next preceding section there be a balance due to the plaintiff after applying the proceeds of the sale, the court, upon motion, shall render judgment against the defendant for any such balance for which, by the record of the case, he may be personally liable to the plaintiff, upon which execution may issue immediately if the balance 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 balance remaining becomes due under the terms of the original contract, which time shall be stated in the judgment. (6a)

**Section 7. *Registration.*** — A certified copy of the final order of the court confirming the sale shall be registered in the registry of deeds. If no right of redemption exists, the certificate of title in the name of the mortgagor shall be cancelled, and a new one issued in the name of the purchaser.

Where a right of redemption exists, the certificate of title in the name of the mortgagor shall not be cancelled, but the certificate of sale and the order confirming the sale shall be registered and a brief memorandum thereof made by the registrar of deeds upon the certificate of title. 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 registrar of deeds on said certificate of title.

If the property is not redeemed, the final deed of sale executed by the sheriff in favor of the purchaser at the foreclosure sale shall be registered with the registry of deeds; whereupon the certificate of title in the name of the mortgagor shall be cancelled and a new one issued in the name of the purchaser. (n)

**Section 8. *Applicability of other provisions.*** — The provisions of sections 31, 32 and 34 of Rule 39 shall be applicable to the 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. (8a)

## **RULE 69**

### **Partition**

**Section 1. *Complaint in action for partition of real estate.*** — A person having the right to compel the partition of real estate may do so as provided in this Rule, setting forth in his complaint the nature and extent of his title and an adequate description of the real estate of which partition is demanded and joining as defendants all other persons interested in the property. (1a)

**Section 2. *Order for partition and partition by agreement thereunder.*** — If after the trial the court finds that the plaintiff has the right thereto, it shall order the partition of the real estate among all the parties in interest. Thereupon the parties may, if they are able to agree, make the partition among themselves by proper instruments of conveyance, and the court shall confirm the partition so agreed upon by all the parties, and such partition, together with the order of the court confirming the same, shall be recorded in the registry of deeds of the place in which the property is situated. (2a)

A final order decreeing partition and accounting may be appealed by any party aggrieved thereby. (n)

**Section 3.** *Commissioners to make partition when parties fail to agree.* — If the parties are unable to agree upon the partition, the court shall appoint not more than three (3) competent and disinterested persons as commissioners to make the partition, commanding them to set off to the plaintiff and to each party in interest such part and proportion of the property as the court shall direct. (3a)

**Section 4.** *Oath and duties of commissioners.* — Before making such partition; the commissioners shall take and subscribe an oath that they will faithfully perform their duties as commissioners, which oath shall be filed in court with the other proceedings in the case. In making the partition, the commissioners shall view and examine the real estate, after due notice to the parties to attend at such view and examination, and shall hear the parties as to their preference in the portion of the property to be set apart to them and the comparative value thereof, and shall set apart the same to the parties in lots or parcels as will be most advantageous and equitable, having due regard to the improvements, situation and quality of the different parts thereof. (4a)

**Section 5.** *Assignment or sale of real estate by commissioners.* — When it is made to appear to the commissioners that the real state, or a portion thereof, cannot be divided without prejudice to the interests of the parties, the court may order it assigned to one of the parties willing to take the same, provided he pays to the other parties such amount as the commissioners deem equitable, unless one of the interested parties asks that the property be sold instead of being so assigned, in which case the court shall order the commissioners to sell the real estate at public sale under such conditions and within such time as the court may determine. (5a)

**Section 6.** *Report of commissioners; proceedings not binding until confirmed.* — The commissioners shall make a full and accurate report to the court of all their proceedings as to the partition, or the assignment of real estate to one of the parties, or the sale of the same. Upon the filing of such report, the clerk of court shall serve copies thereof on all the interested parties with notice that they are allowed ten (10) days within which to file objections to the findings of the report, if they so desire. No proceeding had before or conducted by the commissioners and rendered judgment thereon. (6a)

**Section 7.** *Action of the court upon commissioners report.* — Upon the expiration of the period of ten (10) days referred to in the preceding section or even before the expiration of such period but after the interested parties have filed their objections to the report or their statement of agreement therewith the court may, upon hearing, accept the report and render judgment in accordance therewith, or, for cause shown recommit the same to the commissioners for further report of facts; or set aside the report and appoint new commissioners; or accept the report in part and reject it in part; and may make such order and render such judgment as shall effectuate a fair and just partition of the real estate, or of its value, if assigned or sold as above provided, between the several owners thereof. (7)

**Section 8.** *Accounting for rent and profits in action for partition.* — In an action for partition in accordance with this Rule, a party shall recover from another his just share of rents and profits received by such other party from the real estate in question, and the judgment shall include an allowance for such rents and profits. (8a)

**Section 9.** *Power of guardian in such proceedings.* — The guardian or guardian *ad litem* of a minor or person judicially declared to be incompetent may, with the approval of the court first had, do and perform on behalf of his ward any act, matter, or thing respecting the partition of real estate, which the minor or person judicially declared to be incompetent could do in partition proceedings if he were of age or competent. (9a)

**Section 10.** *Costs and expenses to be taxed and collected.* — The court shall equitably tax and apportion between or among the parties the costs and expenses which accrue in the action, including the compensation of the commissioners, having regard to the interests of the parties, and execution may issue therefor as in other cases. (10a)

**Section 11.** *The judgment and its effect, copy to be recorded in registry of deeds.* — If actual partition of property is made, the judgment shall state definitely, by metes and bounds and adequate description, the particular portion of the real estate assigned to each party, and the effect of the judgment shall be to vest in each party to the action in severalty the portion of the real estate assigned to him. If the whole property is assigned to one of the parties upon his paying to the others the sum or sums ordered by the court, the judgment shall state the fact of such payment and of the assignment of the real estate to the party making the payment, and the effect of the judgment shall be to vest in the party making the payment the whole of the real estate free from any interest on the part of the other parties to the action. If the property is sold and the sale confirmed by the court, the judgment shall state the name of the purchaser or purchasers and a definite description of the parcels of real estate sold to each purchaser, and the effect of the judgment shall be to vest the real estate in the purchaser or purchasers making the payment or payments, free from the claims of any of the parties to the action. A certified copy of the judgment shall in either case be recorded in the registry of deeds of the place in which the real estate is situated, and the expenses of such recording shall be taxed as part of the costs of the action. (11a)

**Section 12.** *Neither paramount rights nor amicable partition affected by this Rule.* — Nothing in this Rule contained shall be construed so as to prejudice, defeat, or destroy the right or title of any person claiming the real estate involved by title under any other person, or by title paramount to the title of the parties among whom the partition may have been made, nor so as to restrict or prevent persons holding real estate jointly or in common from making an amicable partition thereof by agreement and suitable instruments of conveyance without recourse to an action. (12a)

**Section 13.** *Partition of personal property.* — The provisions of this Rule shall apply to partitions of estates composed of personal property, or of both real and personal property, in so far as the same may be applicable. (13)

## **RULE 70**

### **Forcible Entry and Unlawful Detainer**

**Section 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 Municipal 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. (1a)

**Section 2.** *Lessor to proceed against lessee only after demand.* — Unless otherwise stipulated, such action by the lesser 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 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. (2a)

**Section 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. (n)

**Section 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 thereto. All pleadings shall be verified. (3a, RSP)

**Section 5. Action on complaint.** — The court may, from an examination of the allegations in the complaint and such evidence as may be attached thereto, dismiss the case outright on any of the grounds for the dismissal of a civil action which are apparent therein. If no ground for dismissal is found, it shall forthwith issue summons. (n)

**Section 6. Answers.** — Within ten (10) days from service of summons, the defendant shall file his 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. (5 RSP)

**Section 7. Effect of failure to answer.** — Should the defendant fail to answer the complaint within the period above provided, the court, *motu proprio* or on motion of the plaintiff, shall render judgment as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein. The court may in its discretion reduce the amount of damages and attorney's fees claimed for being excessive or otherwise unconscionable, without prejudice to the applicability of section 3 (c), Rule 9 if there are two or more defendants.  
(6, RSP)

**Section 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 18 on pre-trial shall be applicable to the preliminary conference unless inconsistent with the provisions of this Rule.

The failure of the plaintiff to appear in the preliminary conference shall be cause for the dismissal of his complaint. The defendant who appears in the absence of the plaintiff shall be entitled to judgment on his counterclaim in accordance with the next preceding section. All cross-claims shall be dismissed. (7, RSP)

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 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. (n)

**Section 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:

1. Whether the parties have arrived at an amicable settlement, and if so, the terms thereof;
2. The stipulations or admissions entered into by the parties;
3. Whether, on the basis of the pleadings and the stipulations and admission 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;
4. A clear specification of material facts which remain converted; and

5. Such other matters intended to expedite the disposition of the case. (8, RSP)

**Section 10.** *Submission of affidavits and position papers.* — Within ten (10) days from receipt of the order mentioned in the next preceding section, the parties shall submit the affidavits of their witnesses and other evidence on the factual issues defined in the order, together with their position papers setting forth the law and the facts relied upon by them. (9, RSP)

**Section 11.** *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, 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. (n)

**Section 12.** *Referral for conciliation.* — Cases requiring referral for conciliation, where there is no showing of compliance with such requirement, shall be dismissed without prejudice, and may be revived only after that requirement shall have been complied with. (18a, RSP)

**Section 13.** *Prohibited pleadings and motions.* — The following petitions, motions, or pleadings shall not be allowed:

1. Motion to dismiss the complaint except on the ground of lack of jurisdiction over the subject matter, or failure to comply with section 12;
2. Motion for a bill of particulars;
3. Motion for new trial, or for reconsideration of a judgment, or for reopening of trial;
4. Petition for relief from judgment;
5. Motion for extension of time to file pleadings, affidavits or any other paper;
6. Memoranda;
7. Petition for *certiorari*, *mandamus*, or prohibition against any interlocutory order issued by the court;
8. Motion to declare the defendant in default;
9. Dilatory motions for postponement;
10. Reply;
11. Third-party complaints;
12. Interventions. (19a, RSP)

**Section 14. 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 the counsel who submits the same to disciplinary action, and shall be cause to expunge the inadmissible affidavit or portion thereof from the record. (20, RSP)

**Section 15. Preliminary injunction.** — The court may grant preliminary injunction, in accordance with the provisions of Rule 58 hereof, to prevent the defendant from committing further acts of dispossession against the plaintiff.

A possessor deprived of his possession through forcible 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 him in his possession. The court shall decide the motion within thirty (30) days from the filing thereof. (3a)

**Section 16. Resolving defense of ownership.** — When the defendant raises the defense of ownership in his 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. (4a)

**Section 17. Judgment.** — If after trial 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 a counterclaim is established, the court shall render judgment for the sum found in arrears from either party and award costs as justice requires. (6a)

**Section 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 wise 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 and/or briefs as may be submitted by the parties or required by the Regional Trial Court. (7a)

**Section 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 Municipal Trial Court 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, he 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 Municipal Trial Court. In the absence of a contract, he 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 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 stay of 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 Municipal Trial Court, damages for such deprivation of possession and restoration of possession and restoration of possession may be allowed the defendant in the judgment of the Regional Trial Court disposing of the appeal. (8a)

**Section 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. (9a)

**Section 21.** *Immediate execution on appeal to Court of Appeals or Supreme Court.* — The judgment of the Regional Trial Court against the defendant shall be immediately executory, without prejudice to a further appeal that may be taken therefrom. (10a)

## **RULE 71**

### **Contempt**

**Section 1.** *Direct contempt punished summarily.* — A person guilty of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so, may be summarily adjudged in contempt by such court and punished by a fine not exceeding two thousand pesos or imprisonment not exceeding ten (10) days, or both, if it be a Regional Trial Court or a court of equivalent or higher rank, or by a fine not exceeding two hundred pesos or imprisonment not exceeding one (1) day, or both, if it be a lower court. (1a)

**Section 2.** *Remedy therefrom.* — The person adjudged in direct contempt by any court may not appeal therefrom, but may avail himself 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 he will abide by and perform the judgment should the petition be decided against him. (2a)

**Section 3.** *Indirect contempt to be punished after charge and hearing.* — After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt;

(a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;

(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 into or upon 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 thereto;

(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 a subpoena duly served;

(g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him.

But nothing in this section shall be so construed as to prevent the court from issuing process to bring the respondent into court, or from holding him in custody pending such proceedings. (3a)

**Section 4.** *How proceedings commenced.* — Proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said petition shall be docketed, heard and decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision. (n)

**Section 5.** *Where charge to be filed.* — Where the charge for indirect contempt has been committed against a Regional Trial Court or a court of equivalent or higher rank, or against an officer appointed by it, the charge may be filed with such court. Where such contempt has been committed against a lower court, the charge may be filed with the Regional Trial Court of the place in which the lower court is sitting; but the proceedings may also be instituted in such lower court subject to appeal to the Regional Trial Court of such place in the same manner as provided in section 11 of this Rule. (4a; Bar Matter No. 803, 21 July 1998)

**Section 6.** *Hearing; release on bail.* — If the hearing is not ordered to be had forthwith, the respondent may be released from custody upon filing a bond, in an amount fixed by the court, for his appearance at the hearing of the charge. On the day set therefor, the court shall proceed to investigate the charge and consider such comment, testimony or defense as the respondent may make or offer. (5a)

**Section 7.** *Punishment for indirect contempt.* — If the respondent is adjudged guilty of indirect contempt committed against a Regional Trial Court or a court of equivalent or higher rank, he may be punished by a fine not exceeding thirty thousand pesos or imprisonment not exceeding six (6) months, or both. If he is adjudged guilty of contempt committed against a lower court, he may be punished by a fine not exceeding five 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, he 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. (6a)

**Section 8.** *Imprisonment until order obeyed.* — When the contempt consists in the refusal or omission to do an act which is yet in the power of the respondent to perform, he may be imprisoned by order of the court concerned until he performs it. (7a)

**Section 9.** *Proceeding when party released on bail fails to answer.* — When a respondent released on bail fails to appear on the day fixed for the hearing, the court may issue another order of arrest or may order the bond for his appearance to be forfeited and confiscated, or both; and, if the bond be proceeded against, the measure of damages shall be the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the contempt charge was prosecuted, with the costs of the proceedings, and such recovery shall be for the benefit of the party injured. If there is no aggrieved party, the bond shall be liable and disposed of as in criminal cases. (8a)

**Section 10.** *Court may release respondent.* — The court which issued the order imprisoning a person for contempt may discharge him from imprisonment when it appears that public interest will not be prejudiced by his release. (9a)

**Section 11.** *Review of judgment or final order; bond for stay.* — The judgment or final order of a court in a case of indirect contempt may be appealed to the proper court as in criminal cases. But execution of the judgment or final order shall not be suspended until a bond is filed by the person adjudged in contempt, in an amount fixed by the court from which the appeal is taken, conditioned that if the appeal be decided against him he will abide by and perform the judgment or final order. (10a)

**Section 12.** *Contempt against quasi-judicial entities.* — Unless otherwise provided by law, this Rule shall apply to contempt committed against persons, entities, bodies or agencies exercising quasi-judicial functions, or shall have suppletory effect to such rules as they may have adopted pursuant to authority granted to them by law to punish for contempt. The Regional Trial Court of the place wherein the contempt has been committed shall have jurisdiction over such charges as may be filed therefor. (n)