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.

PART I

1997 RULES OF CIVIL PROCEDURE AS AMENDED

(Became effective July 1, 1997, per resolution of the Supreme Court in Bar Matter No. 803, adopted in Baguio City on April 8, 1997.)

RULE 1
General Provisions

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

SECTION 2. In what courts applicable. — These Rules shall apply in all 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 cases 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 date of the filing of such later pleading, irrespective of whether the motion for its admission, if necessary, is denied by the court. (6a, R2)

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 of 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 counterclaim, 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 or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his 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. (6)

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 of 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 names 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 this 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 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 on contractual money claims. — When the action is for recovery of money arising from contract, express or implied, and the defendant dies before the 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 the 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 or 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 through 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] and 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 case of a nonresident 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. (3 and 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 original action before the Regional Trial Court, the counterclaim 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-cross-claims. — A counterclaim 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 forth 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 as 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 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 a 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 to 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.

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 personal knowledge or based on authentic records.

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. (4a) *(As amended by SUPREME COURT CIRCULAR NO. 48-00, August 29, 2000, [A.M. No. 00-2-10-SC. Re: Amendments To Section 4, Rule 7 And Section 13, Rule 41 Of The 1997 Rules Of Civil Procedure]).*

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 therefore 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 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 sanctions. 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 persons 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, 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. (5)

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 upon 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 the defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made in 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 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 the 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 affect 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. — Where 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 of 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 complaint. — 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 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. (3a, 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 averred 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 a part of the pleading for which it is intended. (1[1]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 the 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.

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 sender or the addressee, service may be done by ordinary mail. (5a)

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.

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 a 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, R14)

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 the 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 with the 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 are sued under

the name by which they are generally and 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, upon 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 entity. — 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 writing. — 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 unenforceable under the provisions of the statute of frauds;

(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 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 refiling of the same action or claim. (n)

SECTION 6. Pleading grounds as affirmative defense. — 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 the 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 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 claim. — 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 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 the 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 shall 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 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 issued by such court or officer. (10a, 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. (11a, 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. (n)

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;

(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 directions 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 deposition. — 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 take 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 taking 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. (17a, 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 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 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. Orders for the protection of parties and deponents. — After the service of the interrogatories and prior to the taking of the testimony of the deponent, 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 a witness or the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(d) As to oral examination and other particulars. — Errors and irregularities occurring at the oral examination in the manner of taking the deposition, 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 deposition shall be taken upon oral examination or written interrogatories. The depositions may then 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 subsequently 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 use 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 depositions 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 (10) days after service thereof, with notice as in the 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 matter 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 copies 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 this 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 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 reasonable 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 willfully 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. — Re: Correction of clerical errors in and adoption of amendments to the 1997 Rules of Civil Procedure which were approved on April 8, 1997, effective July 1, 1997. — The Court Resolved to CORRECT the following provisions in the 1997 Rules of Civil Procedure: (a) Section 3 of Rule 30; and (b) Section 5 of Rule 71)*

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 complaint;

(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.

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 the 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 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 the 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 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.

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, with 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 determined 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 so 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 Reconsideration

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;

(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 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 motions. 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 counter-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 Rule, the original judgment or final order shall be vacated, and the action shall stand for trial de novo, but the recorded evidence taken upon the former trial, in so far 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 all of the matter in controversy, or only one, or less than all, of the parties to it, the court may order a new trial or grant reconsideration as to such issues if severable

without interfering with the judgment or final order upon the rest. (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.

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 appealable, 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 to 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
(As amended by SUPREME COURT CIRCULAR NO. 24-94, April 18, 1994.)

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

If the appeal has been duly perfected and finally resolved, such execution may forthwith be applied for in the lower court from which the action originated, on motion of the judgment obligee, submitting therewith certified true copies of the judgment or judgments or the 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.

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 the 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, 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 be 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, it 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 effects 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 effects 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 due 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 judgments for the delivery of personal property, the officer shall take possession of the same and forthwith deliver it to the party entitled thereto and satisfy any judgment for money as therein provided. (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 persons. — The levy on execution shall create a lien in favor of the judgment obligee over the right, title and interest of the judgment obligor in such property at the time of the levy, subject to liens and encumbrances then existing. (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 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 especially 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 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 three (3) public places above-mentioned 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 at any time before the sale, in 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 real property or personal property not capable of manual delivery shall be held in the office of the clerk of court of the Regional Trial Court or the Municipal Trial Court which issued the writ or which was designated by the appellate court. In the case of personal property capable of manual delivery, the sale shall be held in the place where the property is located. (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 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) persons 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 a 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. (27a)

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 section 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 one per centum per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last named amount at the same rate; and if the purchaser be also a creditor having a prior lien 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 redemptioner 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 is actually holding the property 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 remains unsatisfied, in whole or in part, and upon proof to the satisfaction of the court which issued the writ, that a person, corporation, or other juridical entity has property of such judgment obligor or is indebted to him, the court may, by an order, require such person, corporation, or other judicial 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 or commissioner must be under oath, and when a corporation or other judicial 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 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 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 estate upon execution, and the proceedings thereon shall be approved by the court before the execution of the deed. (44a)

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 denies the debt, the court may authorize, by an order made to that effect, the judgment obligee to institute an action against such person or corporation for the recovery of such interest or debt, forbid a transfer or other disposition of such interest or debt within one hundred twenty (120) days from notice of the order, and may punish disobedience of such order as for contempt. Such order may be modified or vacated at any time by the court which issued it, or by the court in which the action is brought, upon such terms as may be just. (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 or of the Philippines,

having jurisdiction to pronounce the judgment or 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 raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto. (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 or 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 adverse party as the appellee. (n)

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 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 clerk of the 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 origin 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 the law or 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 Rule 45. (n)

SECTION 3. Period of ordinary appeal; appeal in habeas corpus cases. — 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. However, an appeal in habeas corpus cases shall be taken within forty-eight (48) hours from notice of the judgment or final order appealed from.

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) *(As amended by Supreme Court Resolution, A.M. No. 01-1-03-SC, June 19, 2001 — Re: Amendment to Section 3, Rule 41 of the 1997 Rules of Civil Procedure)*

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 the documentary evidence in the case is to be included, a statement to the 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 time to 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 perfection 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)

SECTION 10. Duty of clerk of court of the lower court upon perfection of appeal. — Within (30) days after perfection of all the appeals in accordance with 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, and to make a 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 his 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 ten (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 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 or non-payment of the docket and other lawful fees within the reglementary period. *(As amended by SUPREME COURT CIRCULAR NO. 48-00, August 29, 2000, [A.M. No. 00-2-10-SC. Re: Amendments To Section 4, Rule 7 And Section 13, Rule 41 Of The 1997 Rules Of Civil Procedure]).*

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, 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 unsubstantial 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. (n)

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. (n)

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 Inventions 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 apply 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 basis of the petition or the records the Court of Appeals finds prima facie that the court or agency concerned has committed errors of fact or law that would warrant reversal or modification of the award, judgment, final order or resolution sought to be reviewed, it may give due course to the petition; otherwise, it shall dismiss the same. The findings of fact of the 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, forty 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 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 appellee's brief, the appellant may file a reply brief answering points in appellee's brief not already covered in his main brief. (12, R46)

SECTION 10. Time for filing memoranda in special cases. — In certiorari, prohibition, mandamus, quo warranto and habeas corpus cases, the parties shall be 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 reference 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 judgments;

(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 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 court 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 therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of 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 non-compliance with requirements. — The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for. *(Bar Matter No. 803. — Re: Correction of clerical errors in and adoption of amendments to the 1997 Rules of Civil Procedure which were approved on April 8, 1997, effective July 1, 1997. — The Court Resolved to CORRECT the following provisions in the 1997 Rules of Civil Procedure: (a) Section 3 of Rule 30; and (b) Section 5 of Rule 71, (a) Section 3 of Rule 46; and (b) Section 4 of Rule 65)*

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 with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. (n)

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 issues 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 or 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 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 therefore 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 a trial be necessary, the reception of the evidence may be referred to a member of the court or a judge of a Regional Trial Court. (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 of prescriptive period. — The prescriptive period for the refiling 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 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. (2a, 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 4 of Rule 41;

(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. — 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)

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 filling of vacancies occurring therein, and other matters relating to the business of the court; and such rules shall continue in force until repealed or altered by it or by the Supreme Court. (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
Publication 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 matter 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 Rule 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 decisions 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 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. (11a)

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

(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. (5a)

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 to the judgment obligee upon demand the amount due under the judgment, which amount may be recovered form 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 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 on 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 acts or acts complained of, or in requiring performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the 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, 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 adjoined. 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.

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 granted is too great, it may be modified.

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 sureties 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 as 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 as 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 or 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 must 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 as 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 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 said 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 a 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 due regard to the probable outcome of the case and such other circumstances as may aid in the proper resolution of the question involved. If the application is granted, the court shall fix the amount of money to be provisionally paid or such other forms of support as should be provided, taking into account the necessities of the applicant and the resources or means of the adverse party, and the terms of payment or mode for providing the support. If the application is denied, the principal case shall be tried and decided 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. (n)

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 or instituted prior to its filing, the accused may be ordered to provide support pendente lite to the child born to the offended party alleged 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 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.

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 in 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 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 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 parties 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)

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.

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 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 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 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 in 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 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)

Sec 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 the 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 the 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. *(As amended by SUPREME COURT CIRCULAR NO. 56-00, September 5, 2000, [A.M. No. 00-2-03-SC. Re: Amendment To Section 4, Rule 65 Of The 1997 Rules Of Civil Procedure]).*

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 the 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 if 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 sections 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 cost 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 the 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 claims 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, 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 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 may 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, especially 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 of 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 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 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 mortgage 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 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. (n)

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 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 the 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 petition 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 estate, 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 amounts of 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 shall pass the title to the property or bind the parties until the court shall have accepted the report of 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 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)

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 person 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 lessor shall be commenced only after demand to pay or comply with the conditions of the lease and to vacate is made upon the lessee, or by serving written notice of such demand upon the person found on the premises, or by posting such notice on the premises if no person be found thereon, and the lessee fails to comply therewith after fifteen (15) days in the case of land or five (5) days in the case of buildings. (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. Answer. — 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 on 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 who had pleaded a common defense shall appear at the preliminary conference.

No postponement of the preliminary conference shall be granted except for highly meritorious grounds and without prejudice to such sanctions as the court in the exercise of sound discretion may impose on the movant. (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 admissions made by the parties, judgment may be rendered without the need of further proceedings, in which event the judgment shall be rendered within thirty (30) days from issuance of the order;

4. A clear specification of material facts which remain controverted; 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, it may, during the said period, issue an order specifying the matters to be clarified, and require the parties to submit affidavits or other evidence on the said matters within ten (10) days from receipt of said order. Judgment shall be rendered within fifteen (15) days after the receipt of the last affidavit or the expiration of the period for filing the same.

The court shall not resort to the foregoing procedure just to gain time for the rendition of the judgment. (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 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 entry or unlawful detainer may, within five (5) days from the filing of the complaint, present a motion in the action for forcible entry or unlawful detainer for the issuance of a writ of preliminary mandatory injunction to restore 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 the court finds that the allegations of the complaint are true, it shall render judgment in favor of the plaintiff for the restitution of the premises, the sum justly due as arrears of rent or as reasonable compensation for the use and occupation of the premises, attorney's fees and costs. If it finds that said allegations are not true, it shall render judgment for the defendant to recover his 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 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 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 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 other papers, to the clerk of the Regional Trial Court to which the action is appealed.

All amounts so paid to the appellate court shall be deposited with said court or authorized government depositary 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 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 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 process 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. — Re: Correction of clerical errors in and adoption of amendments to the 1997 Rules of Civil Procedure which were approved on April 8, 1997, effective July 1, 1997. — The Court Resolved to CORRECT the following provisions in the 1997 Rules of Civil Procedure: (a) Section 3 of Rule 30; and (b) Section 5 of Rule 71).*

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 upon 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. But 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 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)

PART II
SPECIAL PROCEEDINGS

GENERAL PROVISION

RULE 72
Subject Matter and Applicability of General Rules

SECTION 1. Subject matter of special proceedings. — Rules of special proceedings are provided for in the following cases:

(a) Settlement of estate of deceased persons;
(b) Escheat;
(c) Guardianship and custody of children;
(d) Trustees;
(e) Adoption;
(f) Rescission and revocation of adoption;
(g) Hospitalization of insane persons;
(h) Habeas corpus;
(i) Change of name;
(j) Voluntary dissolution of corporations;
(k) Judicial approval of voluntary recognition of minor natural children;
(l) Constitution of family home;
(m) Declaration of absence and death;
(n) Cancellation or correction of entries in the civil registry.

SECTION 2. Applicability of rules of civil actions. — In the absence of special provisions, the rules provided for in ordinary actions shall be, as far as practicable, applicable in special proceedings.

SETTLEMENT OF ESTATE OF DECEASED PERSONS

RULE 73
Venue and Process

SECTION 1. Where estate of deceased persons settled. — If the decedent is an inhabitant of the Philippines at the time of his death, whether a citizen or an alien, his will shall be proved, or letters of administration granted, and his estate settled, in the Court of First Instance in the province in which he resides at the time of his death, and if he is an inhabitant of a foreign country, the Court of First Instance of any province in which he had estate. The court first taking cognizance of the settlement of the estate of a decedent, shall exercise jurisdiction to the exclusion of all other courts. The jurisdiction assumed by a court, so far as it depends on the place of residence of the decedent, or of the location of his estate, shall not be contested in a suit or proceeding, except in an appeal from that court, in the original case, or when the want of jurisdiction appears on the record.

SECTION 2. Where estate settled upon dissolution of marriage. — When the marriage is dissolved by the death of the husband or wife, the community property shall be inventoried, administered, and liquidated, and the debts thereof paid, in the testate or intestate proceedings of the deceased spouse. If both spouses have died, the conjugal partnership shall be liquidated in the testate or intestate proceedings of either.

SECTION 3. Process. — In the exercise of probate jurisdiction, Court of First Instance may issue warrants and process necessary to compel the attendance of witnesses or to carry into effect their orders and judgments, and all other powers granted them by law. If a person does not perform an order or judgment rendered by a court in the exercise of its probate jurisdiction, it may issue a warrant for the apprehension and imprisonment of such person until he performs such order or judgment, or is released.

SECTION 4. Presumption of death. — For purposes of settlement of his estate, a person shall be presumed dead if absent and unheard from for the periods fixed in the Civil Code. But if such person proves to be alive, he shall be entitled to the balance of his estate after payment of all his debts. The balance may be recovered by motion in the same proceeding.

RULE 74

Summary Settlement of Estates

SECTION 1. Extrajudicial settlement by agreement between heirs. — If the decedent left no will and no debts and the heirs are all of age, or the minors are represented by their judicial or legal representatives duly authorized for the purpose, the parties may, without securing letters of administration, divide the estate among themselves as they see fit by means of a public instrument filed in the office of the register of deeds, and should they disagree, they may do so in an ordinary action of partition. If there is only one heir, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds. The parties to an extrajudicial settlement, whether by public instrument or by stipulation in a pending action for partition, or the sole heir who adjudicates the entire estate to himself by means of an affidavit shall file, simultaneously with and as a condition precedent to the filing of the public instrument, or stipulation in the action for partition, or of the affidavit in the office of the register of deeds, a bond with the said register of deeds, in an amount equivalent to the value of the personal property involved as certified to under oath by the parties concerned and conditioned upon the payment of any just claim that may be filed under section 4 of this rule. It shall be presumed that the decedent left no debts if no creditor files a petition for letters of administration within two (2) years after the death of the decedent.

The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation in the manner provided in the next succeeding section; but no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof.

SECTION 2. Summary settlement of estates of small value. — Whenever the gross value of the estate of a deceased person, whether he died testate or intestate, does not exceed ten thousand pesos, and that fact is made to appear to the Court of First Instance having jurisdiction of the estate by the petition of an interested person and upon hearing, which shall be held not less than (1) month nor more than three (3) months from the date of the last publication of a notice which shall be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province, and after such

other notice to interested persons as the court may direct, the court may proceed summarily, without the appointment of an executor or administrator, and without delay, to grant, if proper, allowance of the will, if any there be, to determine who are the persons legally entitled to participate in the estate, and to apportion and divide it among them after the payment of such debts of the estate as the court shall then find to be due; and such persons, in their own right, if they are of lawful age and legal capacity, or by their guardians or trustees legally appointed and qualified, if otherwise, shall thereupon be entitled to receive and enter into the possession of the portions of the estate so awarded to them respectively. The court shall make such order as may be just respecting the costs of the proceedings, and all orders and judgments made or rendered in the course thereof shall be recorded in the office of the clerk, and the order of partition or award, if it involves real estate, shall be recorded in the proper register's office.

SECTION 3. Bond to be filed by distributees. — The court, before allowing a partition in accordance with the provisions of the preceding section, may require the distributees, if property other than real is to be distributed, to file a bond in an amount to be fixed by court, conditioned for the payment of any just claim which may be filed under the next succeeding section.

SECTION 4. Liability of distributees and estate. — If it shall appear at any time within two (2) years after the settlement and distribution of an estate in accordance with the provisions of either of the first two sections of this rule, that an heir or other person has been unduly deprived of his lawful participation in the estate, such heir or such other person may compel the settlement of the estate in the courts in the manner hereinafter provided for the purpose of satisfying such lawful participation. And if within the same time of two (2) years, it shall appear that there are debts outstanding against the estate which have not been paid, or that an heir or other person has been unduly deprived of his lawful participation payable in money, the court having jurisdiction of the estate may, by order for that purpose, after hearing, settle the amount of such debts or lawful participation and order how much and in what manner each distributee shall contribute in the payment thereof, and may issue execution, if circumstances require, against the bond provided in the preceding section or against the real estate belonging to the deceased,

or both. Such bond and such real estate shall remain charged with a liability to creditors, heirs, or other persons for the full period of two (2) years after such distribution, notwithstanding any transfers of real estate that may have been made.

SECTION 5. Period for claim of minor or incapacitated person. — If on the date of the expiration of the period of two (2) years prescribed in the preceding section the person authorized to file a claim is a minor or mentally incapacitated, or is in prison or outside the Philippines, he may present his claim within one (1) year after such disability is removed.

RULE 75
Production of Will. Allowance of Will Necessary

SECTION 1. Allowance necessary. Conclusive as to execution. — No will shall pass either real or personal estate unless it is proved and allowed in the proper court. Subject to the right of appeal, such allowance of the will shall be conclusive as to its due execution.

SECTION 2. Custodian of will to deliver. — The person who has custody of a will shall, within twenty (20) days after he knows of the death of the testator, deliver the will to the court having jurisdiction, or to the executor named in the will.

SECTION 3. Executor to present will and accept or refuse trust. — A person named as executor in a will shall, within twenty (20) days after he knows of the death of the testator, or within twenty (20) days after he knows that he is named executor if he obtained such knowledge after the death of the testator, present such will to the court having jurisdiction, unless the will has reached the court in any other manner, and shall, within such period, signify to the court in writing his acceptance of the trust or his refusal to accept it.

SECTION 4. Custodian and executor subject to fine for neglect. — A person who neglects any of the duties required in the two last preceding sections without excuse satisfactory to the court shall be fined not exceeding two thousand pesos.

SECTION 5. Person retaining will may be committed. — A person having custody of a will after the death of the testator who neglects without reasonable cause to deliver the same, when ordered so to do, to the court having jurisdiction, may be committed to prison and there kept until he delivers the will.

RULE 76
Allowance or Disallowance of Will

SECTION 1. Who may petition for the allowance of will. — Any executor, devisee, or legatee named in a will, or any other person interested in the estate, may, at any time after the death of the testator, petition the court having jurisdiction to have the will allowed, whether the same be in his possession or not, or is lost or destroyed.

The testator himself may, during his lifetime, petition the court for the allowance of his will.

SECTION 2. Contents of petition. — A petition for the allowance of a will must show, so far as known to the petitioner:

(a) The jurisdictional facts;

(b) The names, ages, and residences of the heirs, legatees, and devisees of the testator or decedent;

(c) The probable value and character of the property of the estate;

(d) The name of the person for whom letters are prayed;

(e) If the will has not been delivered to the court, the name of the person having custody of it.

But no defect in the petition shall render void the allowance of the will, or the issuance of letters testamentary or of administration with the will annexed.

SECTION 3. Court to appoint time for proving will. Notice thereof to be published. — When a will is delivered to, or a petition for

the allowance of a will is filed in, the court having jurisdiction, such court shall fix a time and place for proving the will when all concerned may appear to contest the allowance thereof, and shall cause notice of such time and place to be published three (3) weeks successively, previous to the time appointed, in a newspaper of general circulation in the province.

But no newspaper publication shall be made where the petition for probate has been filed by the testator himself.

SECTION 4. Heirs, devisees, legatees, and executors to be notified by mail or personally. — The court shall also cause copies of the notice of the time and place fixed for proving the will to be addressed to the designated or other known heirs, legatees, and devisees of the testator resident in the Philippines at their places of residence, and deposited in the post office with the postage thereon prepaid at least twenty (20) days before the hearing, if such places of residence be known. A copy of the notice must in like manner be mailed to the person named as executor, if he be not the petitioner; also, to any person named as co-executor not petitioning, if their places of residence be known. Personal service of copies of the notice at least ten (10) days before the day of hearing shall be equivalent to mailing.

If the testator asks for the allowance of his own will, notice shall be sent only to his compulsory heirs.

SECTION 5. Proof at hearing. What sufficient in absence of contest. — At the hearing compliance with the provisions of the last two preceding sections must be shown before the introduction of testimony in support of the will. All such testimony shall be taken under oath and reduced to writing. If no person appears to contest the allowance of the will, the court may grant allowance thereof on the testimony of one of the subscribing witnesses only, if such witness testify that the will was executed as is required by law.

In the case of a holographic will, it shall be necessary that at least one witness who knows the handwriting and signature of the testator explicitly declare that the will and the signature are in the handwriting of the testator. In the absence of any such competent

witness, and if the court deem it necessary, expert testimony may be resorted to.

SECTION 6. Proof of lost or destroyed will. Certificate thereupon. — No will shall be proved as a lost or destroyed will unless the execution and validity of the same be established, and the will is proved to have been in existence at the time of the death of the testator, or is shown to have been fraudulently or accidentally destroyed in the lifetime of the testator without his knowledge, nor unless its provisions are clearly and distinctly proved by at least two (2) credible witnesses. When a lost will is proved, the provisions thereof must be distinctly stated and certified by the judge, under the seal of the court, and the certificate must be filed and recorded as other wills are filed and recorded.

SECTION 7. Proof when witnesses do not reside in province. — If it appears at the time fixed for the hearing that none of the subscribing witnesses resides in the province, but that the deposition of one or more of them can be taken elsewhere, the court may, on motion, direct it to be taken, and may authorize a photographic copy of the will to be made and to be presented to the witness on his examination, who may be asked the same questions with respect to it, and to the handwriting of the testator and others, as would be pertinent and competent if the original will were present.

SECTION 8. Proof when witnesses dead or insane or do not reside in the Philippines. — If it appears at the time fixed for the hearing that the subscribing witnesses are dead or insane, or that none of them resides in the Philippines, the court may admit the testimony of other witnesses to prove the sanity of the testator, and the due execution of the will; and as evidence of the execution of the will, it may admit proof of the handwriting of the testator and of the subscribing witnesses, or of any of them.

SECTION 9. Grounds for disallowing will. — The will shall be disallowed in any of the following cases;

(a) If not executed and attested as required by law;

(b) If the testator was insane, or otherwise mentally incapable to make a will, at the time of its execution;

(c) If it was executed under duress, or the influence of fear, or threats;

(d) If it was procured by undue and improper pressure and influence, on the part of the beneficiary, or of some other person for his benefit;

(e) If the signature of the testator was procured by fraud or trick, and he did not intend that the instrument should be his will at the time of fixing his signature thereto.

SECTION 10. Contestant to file grounds of contest. — Anyone appearing to contest the will must state in writing his grounds for opposing its allowance, and serve a copy thereof on the petitioner and other parties interested in the estate.

SECTION 11. Subscribing witnesses produced or accounted for where will contested. — If the will is contested, all the subscribing witnesses, and the notary in the case of wills executed under the Civil Code of the Philippines, if present in the Philippines and not insane, must be produced and examined, and the death, absence, or insanity of any of them must be satisfactorily shown to the court. If all or some of such witnesses are present in the Philippines but outside the province where the will has been filed, their deposition must be taken. If any or all of them testify against the due execution of the will, or do not remember having attested to it, or are otherwise of doubtful credibility, the will may, nevertheless, be allowed if the court is satisfied from the testimony of other witnesses and from all the evidence presented that the will was executed and attested in the manner required by law.

If a holographic will is contested, the same shall be allowed if at least three (3) witnesses who know the handwriting of the testator explicitly declare that the will and the signature are in the handwriting of the testator; in the absence of any competent witness, and if the court deem it necessary, expert testimony may be resorted to.

SECTION 12. Proof where testator petitions for allowance of holographic will. — Where the testator himself petitions for the probate of his holographic will and no contest in filed, the fact that he affirms that the holographic will and the signature are in his own handwriting, shall be sufficient evidence of the genuineness and due execution thereof. If the holographic will is contested, the burden of disproving the genuineness and due execution thereof shall be on the contestant. The testator may, in his turn, present such additional proof as may be necessary to rebut the evidence for the contestant.

SECTION 13. Certificate of allowance attached to proved will. To be recorded in the Office of Register of Deeds. — If the court is satisfied, upon proof taken and filed, that the will was duly executed, and that the testator at the time of its execution was of sound and disposing mind, and not acting under duress, menace, and undue influence, or fraud, a certificate of its allowance, signed by the judge, and attested by the seal of the court shall be attached to the will and the will and certificate filed and recorded by the clerk. Attested copies of the will devising real estate and of certificate of allowance thereof, shall be recorded in the register of deeds of the province in which the lands lie.

RULE 77
Allowance of Will Proved Outside of the Philippines and Administration of Estate Thereunder

SECTION 1. Will proved outside the Philippines may be allowed here. — Wills proved and allowed in a foreign country, according to the laws of such country, may be allowed, filed, and recorded by the proper Court of First Instance in the Philippines.

SECTION 2. Notice of hearing for allowance. — When a copy of such will and of the order or decree of the allowance thereof, both duly authenticated, are filed with a petition for allowance in the Philippines, by the executor or other person interested, in the court having jurisdiction, such court shall fix a time and place for the hearing, and cause notice thereof to be given as in case of an original will presented for allowance.

SECTION 3. When will allowed, and effect thereof . — If it appears at the hearing that the will should be allowed in the Philippines, the court shall so allow it, and a certificate of its allowance, signed by the judge, and attested by the seal of the court, to which shall be attached a copy of the will, shall be filed and recorded by the clerk, and the will shall have the same effect as if originally proved and allowed in such court.

SECTION 4. Estate, how administered. — When a will is thus allowed, the court shall grant letters testamentary, or letters of administration with the will annexed, and such letters testamentary or of administration, shall extend to all the estate of the testator in the Philippines. Such estate, after the payment of just debts and expenses of administration, shall be disposed of according to such will, so far as such will may operate upon it; and the residue, if any, shall be disposed of as is provided by law in cases of estates in the Philippines belonging to persons who are inhabitants of another state or country.

RULE 78
Letters Testamentary and of Administration, When and To Whom Issued

SECTION 1. Who are incompetent to serve as executors or administrators. — No person is competent to serve as executor or administrator who:

(a) Is a minor;
(b) Is not a resident of the Philippines; and
(c) Is in the opinion of the court unfit to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity, or by reason of conviction of an offense involving moral turpitude.

SECTION 2. Executor of executor not to administer estate. — The executor of an executor shall not, as such, administer the estate of the first testator.

SECTION 3. Married women may serve. — A married woman may serve as executrix or administratrix, and the marriage of a single

woman shall not affect her authority so to serve under a previous appointment.

SECTION 4. Letters testamentary issued when will allowed. — When a will has been proved and allowed, the court shall issue letters testamentary thereon to the person named as executor therein, if he is competent, accepts the trust, and gives bond as required by these rules.

SECTION 5. Where some co-executors disqualified others may act. — When all of the executors named in a will can not act because of incompetency, refusal to accept the trust, or failure to give bond, on the part of one or more of them, letters testamentary may issue to such of them as are competent, accept and give bond, and they may perform the duties and discharge the trust required by the will.

SECTION 6. When and to whom letters of administration granted. — If no executor is named in the will, or the executor or executors are incompetent, refuse the trust, or fail to give bond, or a person dies intestate, administration shall be granted:

(a) To the surviving husband or wife, as the case may be, or next of kin, or both, in the discretion of the court, or to such person as such surviving husband or wife, or next of kin, requests to have appointed, if competent and willing to serve;

(b) If such surviving husband or wife, as the case may be, or next of kin, or the person selected by them, be incompetent or unwilling, or if the husband or widow, or next of kin, neglects for thirty (30) days after the death of the person to apply for administration or to request that administration be granted to some other person, it may be granted to one or more of the principal creditors, if competent and willing to serve;

(c) If there is no such creditor competent and willing to serve, it may be granted to such other person as the court may select.

RULE 79
Opposing Issuance of Letters Testamentary. Petition and Contest for Letters of Administration

SECTION 1. Opposition to issuance of letters testamentary. Simultaneous petition for administration. — Any person interested in a will may state in writing the grounds why letters testamentary should not issue to the persons named therein as executors, or any of them, and the court, after hearing upon notice, shall pass upon the sufficiency of such grounds. A petition may, at the same time, be filed for letters of administration with the will annexed.

SECTION 2. Contents of petition for letters of administration. — A petition for letters of administration must be filed by an interested person and must show, so far as known to the petitioner:

(a) The jurisdictional facts;
(b) The names, ages, and residences of the heirs, and the names and residences of the creditors, of the decedent
(c) The probable value and character of the property of the estate;
(d) The name of the person for whom letters of administration are prayed.

But no defect on the petition shall render void the issuance of letters of administration.

SECTION 3. Court to set time for hearing. Notice thereof . — When a petition for letters of administration is filed in the court having jurisdiction, such court shall fix a time and place for hearing the petition, and shall cause notice thereof to be given to the known heirs and creditors of the decedent, and to any other persons believed to have an interest in the estate, in the manner provided in section 3 and 4 of Rule 76.

SECTION 4. Opposition to petition for administration. — Any interested person may, by filing a written opposition, contest the petition on the ground of the incompetency of the person for whom letters are prayed therein, or on the ground of the contestant's own right to the administration, and may pray that letters issue to himself, or to any competent person or persons named in the opposition.

SECTION 5. Hearing and order for letters to issue. — At the hearing of the petition, it must first be shown that notice has been

given as hereinabove required, and thereafter the court shall hear the proofs of the parties in support of their respective allegations, and if satisfied that the decedent left no will, or that there is no competent and willing executor, it shall order the issuance of letters of administration to the party best entitled thereto.

SECTION 6. When letters of administration granted to any applicant. — Letters of administration may be granted to any qualified applicant, though it appears that there are other competent persons having better right to the administration, if such persons fail to appear when notified and claim the issuance of letters to themselves.

RULE 80
Special Administrator

SECTION 1. Appointment of special administrator. — When there is delay in granting letters testamentary or of administration by any cause including an appeal from the allowance or disallowance of a will, the court may appoint a special administrator to take possession and charge of the estate of the deceased until the questions causing the delay are decided and executors or administrators appointed.

SECTION 2. Powers and duties of special administrator. — Such special administrator shall take possession and charge of the goods, chattels, rights, credits, and estate of the deceased and preserve the same for the executor or administrator afterwards appointed, and for that purpose may commence and maintain suits as administrator. He may sell only such perishable and other property as the court orders sold. A special administrator shall not be liable to pay any debts of the deceased unless so ordered by the court.

SECTION 3. When powers of special administrator cease. Transfer of effects. Pending suits. — When letters testamentary or of administration are granted on the estate of the deceased, the powers of the special administrator shall cease, and he shall forthwith deliver to the executor or administrator the goods, chattels, money, and estate of the deceased in his hands. The executor or administrator may prosecute to final judgment suits commenced by such special administrator.

RULE 81
Bonds of Executors and Administrators

SECTION 1. Bond to be given before issuance of letters. Amount. Conditions. — Before an executor or administrator enters upon the execution of his trust, and letters testamentary or of administration issue, he shall give a bond, in such sum as the court directs, conditioned as follows:

(a) To make and return to the court, within three (3) months, a true and complete inventory of all goods, chattels, rights, credits, and estate of the deceased which shall come to his possession or knowledge or to the possession of any other person for him;

(b) To administer according to these rules, and, if an executor, according to the will of the testator, all goods, chattels, rights, credits, and estate which shall at any time come to his possession or to the possession of any other person for him, and from the proceeds to pay and discharge all debts, legacies, and charges on the same, or such dividends thereon as shall be decreed by the court;

(c) To render a true and just account of his administration to the court within one (1) year, and at any other time when required by the court; and

(d) To perform all orders of the court by him to be performed.

SECTION 2. Bond of executor where directed in will. When further bond required. — If the testator in his will directs that the executor serve without bond, or with only his individual bond, he may be allowed by the court to give bond in such sum and with such surety as the court approves conditioned only to pay the debts of the testator; but the court may require of the executor a further bond in case of a change in his circumstances, or for other sufficient cause, with the conditions named in the last preceding section.

SECTION 3. Bonds of joint executors and administrators. — When two or more persons are appointed executors or administrators the court may take a separate bond from each, or a joint bond from all.

SECTION 4. Bond of special administrator. — A special administrator before entering upon the duties of his trust shall give a bond, in such sum as the court directs, conditioned that he will make and return a true inventory of the goods, chattels, rights, credits, and estate of the deceased which come to his possession or knowledge, and that he will truly account for such as are received by him when required by the court, and will deliver the same to the person appointed executor or administrator, or to such other person as may be authorized to receive them.

RULE 82
Revocation of Administration, Death, Resignation, and Removal of Executors and Administrators

SECTION 1. Administration revoked if will discovered. Proceedings thereupon. — If after letters of administration have been granted on the estate of a decedent as if he had died intestate, his will is proved and allowed by the court, the letters of administration shall be revoked and all powers thereunder cease, and the administrator shall forthwith surrender the letters to the court, and render his account within such time as the court directs. Proceedings for the issuance of letters testamentary or of administration under the will shall be as hereinbefore provided.

SECTION 2. Court may remove or accept resignation of executor or administrator. Proceedings upon death, resignation, or removal. — If an executor or administrator neglects to render his account and settle the estate according to law, or to perform an order or judgment of the court, or a duty expressly provided by these rules, or absconds, or becomes insane, or otherwise incapable or unsuitable to discharge the trust, the court may remove him, or, in its discretion, may permit him to resign. When an executor or administrator dies, resigns, or is removed the remaining executor or administrator may administer the trust alone, unless the court grants letters to someone to act with him.

If there is no remaining executor or administrator, administration may be granted to any suitable person.

SECTION 3. Acts before revocation, resignation, or removal to be valid. — The lawful acts of an executor or administrator before the revocation of his letters testamentary or of administration, or before his resignation or removal, shall have the like validity as if there had been no such revocation, resignation, or removal.

SECTION 4. Powers of new executor or administrator. Renewal of license to sell real estate. — The person to whom letters testamentary or of administration are granted after the revocation of former letters, or the death, resignation, or removal of a former executor or administrator, shall have the like powers to collect and settle the estate not administered that the former executor or administrator had, and may prosecute or defend actions commenced by or against the former executor or administrator, and have execution on judgments recovered in the name of such former executor or administrator. An authority granted by the court to the former executor or administrator for the sale or mortgage of real estate may be renewed in favor of such person without further notice or hearing.

RULE 83
Inventory and Appraisal. Provision for Support of Family

SECTION 1. Inventory and appraisal to be returned within three months. — When three (3) months after his appointment every executor or administrator shall return to the court a true inventory and appraisal of all the real and personal estate of the deceased which has come into his possession or knowledge. In the appraisement of such estate, the court may order one or more of the inheritance tax appraisers to give his or their assistance.

SECTION 2. Certain articles not to be inventoried. — The wearing apparel of the surviving husband or wife and minor children, the marriage bed and bedding, and such provisions and other articles as will necessarily be consumed in the subsistence of the family of the deceased, under the direction of the court, shall not be considered as

assets, nor administered as such, and shall not be included in the inventory.

SECTION 3. Allowance to widow and family. — The widow and minor or incapacitated children of a deceased person, during the settlement of the estate, shall receive therefrom, under the direction of the court, such allowance as are provided by law.

RULE 84
General Powers and Duties of Executors and Administrators

SECTION 1. Executor or administrator to have access to partnership books and property. How right enforced. — The executor or administrator of the estate of a deceased partner shall at all times have access to, and may examine and take copies of, books and papers relating to the partnership business, and may examine and make invoices of the property belonging to such partnership; and the surviving partner or partners, on request, shall exhibit to him all such books, papers, and property in their hands or control. On the written application of such executor or administrator, the court having jurisdiction of the estate may order any such surviving partner or partners to freely permit the exercise of the rights, and to exhibit the books, papers, and property, as in this section provided, and may punish any partner failing to do so for contempt.

SECTION 2. Executor or administrator to keep buildings in repair. — An executor or administrator shall maintain in tenantable repair the houses and other structures and fences belonging to the estate, and deliver the same in such repair to the heirs or devisees when directed so to do by the court.

SECTION 3. Executor or administrator to retain whole estate to pay debts, and to administer estate not willed. — An executor or administrator shall have the right to the possession and management of the real as well as the personal estate of the deceased so long as it is necessary for the payment of the debts and the expenses of administration.

RULE 85

Accountability and Compensation of Executors and Administrators

SECTION 1. Executor or administrator chargeable with all estate and income. — Except as otherwise expressly provided in the following sections, every executor or administrator is chargeable in his account with the whole of the estate of the deceased which has come into his possession, at the value of the appraisement contained in the inventory; with all the interest, profit, and income of such estate; and with the proceeds of so much of the estate as is sold by him, at the price at which it was sold.

SECTION 2. Not to profit by increase or lose by decrease in value. — No executor or administrator shall profit by the increase, or suffer loss by the decrease or destruction, without his fault, of any part of the estate. He must account for the excess when he sells any part of the estate for more than the appraisement, and if any is sold for less than the appraisement, he is not responsible for the loss, if the sale has been justly made. If he settles any claim against the estate for less than its nominal value, he is entitled to charge in his account only the amount he actually paid on the settlement.

SECTION 3. When not accountable for debts due estate. — No executor or administrator shall be accountable for debts due the deceased which remain uncollected without his fault.

SECTION 4. Accountable for income from realty used by him. — If the executor or administrator uses or occupies any part of the real estate himself, he shall account for it as may be agreed upon between him and the parties interested, or adjusted by the court with their assent; and if the parties do not agree upon the sum to be allowed, the same may be ascertained by the court, whose determination in this respect shall be final.

SECTION 5. Accountable if he neglects or delays to raise or pay money. — When an executor or administrator neglects or unreasonably delays to raise money, by collecting the debts or selling the real or personal estate of the deceased, or neglects to pay over the money he has in his hands, and the value of the estate is thereby lessened or unnecessary cost or interest accrues, or the persons

interested suffer loss, the same shall be deemed waste and the damage sustained may be charged and allowed against him in his account, and he shall be liable therefor on his bond.

SECTION 6. When allowed money paid as costs. — The amount paid by an executor or administrator for costs awarded against him shall be allowed in his administration account, unless it appears that the action or proceeding in which the costs are taxed was prosecuted or resisted without just cause, and not in good faith.

SECTION 7. What expenses and fees allowed executor or administrator. Not to charge for services as attorney. Compensation provided by will controls unless renounced.— An executor or administrator shall be allowed the necessary expenses in the care, management, and settlement of the estate, and for his services, four pesos per day for the time actually and necessarily employed, or a commission upon the value of so much of the estate as comes into his possession and is finally disposed of by him in the payment of debts, expenses, legacies, or distributive shares, or by delivery to heirs or devisees, of two per centum of the first five thousand pesos of such value, one per centum of so much of such value as exceeds five thousand pesos and does not exceed thirty thousand pesos, one-half per centum of so much of such value as exceeds thirty thousand pesos and does not exceed one hundred thousand pesos and one-quarter per centum of so much of such value as exceeds one hundred thousand pesos. But in any special case, where the estate is large, and the settlement has been attended with great difficulty, and has required a high degree or capacity on the part of the executor or administrator, a greater sum may be allowed. If objection to the fees allowed be taken, the allowance may be re-examined on appeal.

If there are two or more executors or administrators, the compensation shall be apportioned among them by the court according to the services actually rendered by them respectively.

When the executor or administrator is an attorney, he shall not charge against the estate any professional fees for legal services rendered by him.

When the deceased by will makes some other provision for the compensation of his executor, that provision shall be a full satisfaction for his services unless by a written instrument filed in the court he renounces all claim to the compensation provided by the will.

SECTION 8. When executor or administrator to render account. — Every executor or administrator shall render an account of his administration within one (1) year from the time of receiving letters testamentary or of administration, unless the court otherwise directs because of extensions of time for presenting claims against, or paying the debts of, the estate, or for disposing of the estate; and he shall render such further accounts as the court may require until the estate is wholly settled.

SECTION 9. Examination on oath with respect to account. — The court may examine the executor or administrator upon oath with respect to every matter relating to any account rendered by him, and shall so examine him as to the correctness of his account before the same is allowed, except when no objection is made to the allowance of the account and its correctness is satisfactorily established by competent proof. The heirs, legatees, distributees, and creditors of the estate shall have the same privilege as the executor or administrator of being examined on oath of any matter relating to an administration account.

SECTION 10. Account to be settled on notice. — Before the account of an executor or administrator is allowed, notice shall be given to persons interested of the time and place of examining and allowing the same; and such notice may be given personally to such persons interested or by advertisement in a newspaper or newspapers, or both, as the court directs.

SECTION 11. Surety on bond may be party to accounting. — Upon the settlement of the account of an executor or administrator, a person liable as surety in respect to such account may, upon application, be admitted as party to such accounting.

RULE 86
Claims Against Estate

SECTION 1. Notice to creditors to be issued by court. — Immediately after granting letters testamentary or of administration, the court shall issue a notice requiring all persons having money claims against the decedent to file them in the office of the clerk of said court.

SECTION 2. Time within which claims shall be filed. — In the notice provided in the preceding section, the court shall state the time for the filing of claims against the estate, which shall not be more than twelve (12) nor less than six (6) months after the date of the first publication of the notice. However, at any time before an order of distribution is entered, on application of a creditor who has failed to file his claim within the time previously limited, the court may, for cause shown and on such terms as are equitable, allow such claim to be filed within a time not exceeding one (1) month.

SECTION 3. Publication of notice to creditors. — Every executor or administrator shall, immediately after the notice to creditors is issued, cause the same to be published three (3) weeks successively in a newspaper of general circulation in the province, and to be posted for the same period in four public places in the province and in two public places in the municipality where the decedent last resided.

SECTION 4. Filing copy of printed notice. — Within ten (10) days after the notice has been published and posted in accordance with the preceding section, the executor or administrator shall file or cause to be filed in the court a printed copy of the notice accompanied with an affidavit setting forth the dates of the first and last publication thereof and the name of the newspaper in which the same is printed.

SECTION 5. Claims which must be filed under the notice. If not filed, barred; exceptions. — All claims for money against the decedent, arising from contract, express or implied, whether the same be due, not due, or contingent, all claims for funeral expenses and expenses for the last sickness of the decedent, and judgment for money against the decedent, must be filed within the time limited in the notice; otherwise they are barred forever, except that they may be set forth as counterclaims in any action that the executor or administrator may bring against the claimants. Where an executor or

administrator commences an action, or prosecutes an action already commenced by the deceased in his lifetime, the debtor may set forth by answer the claims he has against the decedent, instead of presenting them independently to the court as herein provided, and mutual claims may be set off against each other in such action; and if final judgment is rendered in favor of the defendant, the amount so determined shall be considered the true balance against the estate, as though the claim had been presented directly before the court in the administration proceedings. Claims not yet due, or contingent, may be approved at their present value.

SECTION 6. Solidary obligation of decedent. — Where the obligation of the decedent is solidary with another debtor, the claim shall be filed against the decedent as if he were the only debtor, without prejudice to the right of the estate to recover contribution form the other debtor. In a joint obligation of the decedent, the claim shall be confined to the portion belonging to him.

SECTION 7. Mortgage debt due from estate. — A creditor holding a claim against the deceased secured by mortgage or other collateral security, may abandon the security and prosecute his claim in the manner provided in this rule, and share in the general distribution of the assets of the estate; or he may foreclose his mortgage or realize upon his security, by action in court, making the executor or administrator a party defendant, and if there is a judgment for a deficiency, after the sale of the mortgaged premises, or the property pledged, in the foreclosure or other proceeding to realize upon the security, he may claim his deficiency judgment in the manner provided in the preceding section; or he may rely upon his mortgage of other security alone, and foreclose the same at any time within the period of the statute of limitations, and in that event he shall not be admitted as a creditor, and shall receive no share in the distribution of the other assets of the estate; but nothing herein contained shall prohibit the executor or administrator from redeeming the property mortgaged or pledged, by paying the debt for which it is held as security, under the direction of the court, if the court shall adjudge it to be for the best interest of the estate that such redemption shall be made.

SECTION 8. Claim of executor or administrator against an estate. — If the executor or administrator has a claim against the estate he represents, he shall give notice thereof, in writing, to the court, and the court shall appoint a special administrator, who shall, in the adjustment of such claim, have the same power and be subject to the same liability as the general administrator or executor in the settlement of other claims. The court may order the executor or administrator to pay to the special administrator necessary funds to defend such claim.

SECTION 9. How to file a claim. Contents thereof . Notice to executor or administrator. — A claim may be filed by delivering the same with the necessary vouchers to the clerk of court and by serving a copy thereof on the executor or administrator. If the claim be founded on a bond, bill, note or any other instrument, the original need not be filed, but a copy thereof with all endorsements shall be attached to the claim and filed therewith. On demand, however, of the executor or administrator, or by order of the court or judge, the original shall be exhibited, unless it be lost or destroyed, in which case the claimant must accompany his claim with affidavit or affidavits containing a copy or particular description of the instrument and stating its loss or destruction. When the claim is due, it must be supported by affidavit stating the amount justly due, that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of the affiant. If the claim is not due, or is contingent, when filed, it must also be supported by affidavit stating the particulars thereof. When the affidavit is made by a person other than the claimant, he must set forth therein the reason why it is not made by the claimant. The claim once filed shall be attached to the record of the case in which the letters testamentary or of administration were issued, although the court, in its discretion, and as a matter of convenience, may order all the claims to be collected in a separate folder.

SECTION 10. Answer of executor or administrator. Offsets. — Within fifteen (15) days after service of a copy of the claim on the executor or administrator, he shall file his answer admitting or denying the claim specifically, and setting forth the substance of the matters which are relied upon to support the admission or denial. If he has no knowledge sufficient to enable him to admit or deny

specifically, he shall state such want of knowledge. The executor or administrator in his answer shall allege in offset any claim which the decedent before death has against the claimant, and his failure to do so shall bar the claim forever. A copy of the answer shall be served by the executor or administrator on the claimant. The court in its discretion may extend the time for filing such answer.

SECTION 11. Disposition of admitted claim. — Any claim admitted entirely by the executor or administrator shall immediately be submitted by the clerk to the court who may approve the same without hearing; but the court, in its discretion, before approving the claim, may order that known heirs, legatees, or devisees be notified and heard. If upon hearing, an heir, legatee, or devisee opposes the claim, the court may, in its discretion, allow him fifteen (15) days to file an answer to the claim in the manner prescribed in the preceding section.

SECTION 12. Trial of contested claim. — Upon the filing of an answer to a claim, or upon the expiration of the time for such filing, the clerk of court shall set the claim for trial with notice to both parties. The court may refer the claim to a commissioner.

SECTION 13. Judgment appealable. — The judgment of the court approving or disapproving a claim, shall be filed with the record of the administration proceedings with notice to both parties, and is appealable as in ordinary cases. A judgment against the executor or administrator shall be that he pay, in due course of administration, the amount ascertained to be due, and it shall not create any lien upon the property of the estate, or give to the judgment creditor any priority of payment.

SECTION 14. Costs. — When the executor or administrator, in his answer, admits and offers to pay part of a claim, and the claimant refuses to accept the amount offered in satisfaction of his claim, if he fails to obtain a more favorable judgment, he cannot recover costs, but must pay to the executor or administrator costs from the time of the offer. Where an action commenced against the deceased for money has been discontinued and the claim embraced therein presented as in this rule provided, the prevailing party shall be allowed the costs of his action up to the time of its discontinuance.

RULE 87
Actions By and Against Executors and Administrators

SECTION 1. Actions which may and which may not be brought against executor or administrator. — No action upon a claim for the recovery of money or debt or interest thereon shall be commenced against the executor or administrator; but actions to recover real or personal property, or an interest therein, from the estate, or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal, may be commenced against him.

SECTION 2. Executor or administrator may bring or defend actions which survive. — For the recovery or protection of the property or rights of the deceased, an executor or administrator may bring or defend, in the right of the deceased, actions for causes which survive.

SECTION 3. Heir may not sue until share assigned. — When an executor or administrator is appointed and assumes the trust, no action to recover the title or possession of lands or for damages done to such lands shall be maintained against him by an heir or devisee until there is an order of the court assigning such lands to such heir or devisee until the time allowed for paying debts has expired.

SECTION 4. Executor or administrator may compound with debtor. — With the approval of the court, an executor or administrator may compound with the debtor of the deceased for a debt due, and may give a discharge of such debt on receiving a just dividend of the estate of the debtor.

SECTION 5. Mortgage due estate may be foreclosed. — A mortgage belonging to the estate of a deceased person, as mortgagee or assignee of the right of a mortgagee, may be foreclosed by the executor or administrator.

SECTION 6. Proceedings when property concealed, embezzled, or fraudulently conveyed. — If an executor or administrator, heir, legatee, creditor, or other individual interested in the estate of the deceased, complains to the court having jurisdiction of the estate that a person is suspected of having concealed, embezzled, or conveyed away any of the money, goods, or chattels of the deceased, or that such person has in his possession or has knowledge of any deed, conveyance, bond, contract, or other writing which contains evidence of or tends to disclose the right, title, interest, or claim of the deceased to real or personal estate, or the last will and testament of the deceased, the court may cite such suspected person to appear before it and may examine him on oath on the matter of such complaint; and if the person so cited refuses to appear, or to answer on such examination or such interrogatories as are put to him, the court may punish him for contempt, and may commit him to prison until he submits to the order of the court. The interrogatories put to any such person, and his answers thereto, shall be in writing and shall be filed in the clerk's office.

SECTION 7. Person entrusted with estate compelled to render account. — The court, on complaint of an executor or administrator, may cite a person entrusted by an executor or administrator with any part of the estate of the deceased to appear before it, and may require such person to render a full account, on oath, of the money, goods, chattels, bonds, accounts, or other papers belonging to such estate as came to his possession in trust for such executor or administrator, and of his proceedings thereon; and if the person so cited refuses to appear to render such account, the court may punish him for contempt as having disobeyed a lawful order of the court.

SECTION 8. Embezzlement before letters issued. — If a person, before the granting of letters testamentary or of administration on the estate of the deceased, embezzles or alienates any of the money, goods, chattels, or effects of such deceased, such person shall be liable to an action in favor of the executor or administrator of the estate for double the value of the property sold, embezzled, or alienated, to be recovered for the benefit of such estate.

SECTION 9. Property fraudulently conveyed by deceased may be recovered. When executor or administrator must bring action. —

When there is deficiency of assets in the hands of an executor or administrator for the payment of debts and expenses of administration, and the deceased in his lifetime had conveyed real or personal property, or a right or interest therein, or a debt or credit, with intent to defraud his creditors or to avoid any right, debt, or duty; or had so conveyed such property, right, interest, debt, or credit that by law the conveyance would be void as against his creditors, and the subject of the attempted conveyance would be liable to attachment by any of them in his lifetime, the executor or administrator may commence and prosecute to final judgment an action for the recovery of such property, right, interest, debt, or credit for the benefit of the creditors; but he shall not be bound to commence the action unless on application of the creditors of the deceased, nor unless the creditors making the application pay such part of the costs and expenses, or give security therefor to the executor or administrator, as the court deems equitable.

SECTION 10. When creditor may bring action. Lien for costs. — When there is such a deficiency of assets, and the deceased in his lifetime had made or attempted such a conveyance, as is stated in the last preceding section, and the executor or administrator has not commenced the action therein provided for, any creditor of the estate may, with the permission of the court, commence and prosecute to final judgment, in the name of the executor or administrator, a like action for the recovery of the subject of the conveyance or attempted conveyance for the benefit of the creditors. But the action shall not be commenced until the creditor has filed in a court a bond executed to the executor or administrator, in an amount approved by the judge, conditioned to indemnify the executor or administrator against the costs and expenses incurred by reason of such action. Such creditor shall have a lien upon any judgment recovered by him in the action for such costs and other expenses incurred therein as the court deems equitable. Where the conveyance or attempted conveyance has been made by the deceased in his lifetime in favor of the executor or administrator, the action which a creditor may bring shall be in the name of all the creditors, and permission of the court and filing of bond as above prescribed, are not necessary.

RULE 88
Payment of the Debts of the Estate

SECTION 1. Debts paid in full if estate sufficient. — If, after hearing all the money claims against the estate, and after ascertaining the amount of such claims, it appears that there are sufficient assets to pay the debts, the executor or administrator shall pay the same within the time limited for that purpose.

SECTION 2. Part of estate from which debt paid when provision made by will. — If the testator makes provision by his will, or designates the estate to be appropriated for the payment of debts, the expenses of administration, or the family expenses, they shall be paid according to the provisions of the will; but if the provisions made by the will or the estate appropriated, is not sufficient for that purpose, such part of the estate of the testator, real or personal, as is not disposed of by will, if any, shall be appropriated for that purpose.

SECTION 3. Personality first chargeable for debts, then realty. — The personal estate of the deceased not disposed of by will shall be first chargeable with the payment of debts and expenses; and if said personal estate is not sufficient for that purpose, or its sale would redound to the detriment of the participants of the estate, the whole of the real estate not disposed of by will, or so much thereof as is necessary, may be sold, mortgaged, or otherwise encumbered for that purpose by the executor or administrator, after obtaining the authority of the court therefor. Any deficiency shall be met by contributions in accordance with the provisions of section 6 of this rule.

SECTION 4. Estate to be retained to meet contingent claims. — If the court is satisfied that a contingent claim duly filed is valid, it may order the executor or administrator to retain in his hands sufficient estate to pay such contingent claim when the same becomes absolute, or, if the estate is insolvent, sufficient to pay a portion equal to the dividend of the other creditors.

SECTION 5. How contingent claim becoming absolute in two years allowed and paid. Action against distributees later. — If such contingent claim becomes absolute and is presented to the court, or to the executor or administrator, within two (2) years from the time limited for other creditors to present their claims, it may be allowed

by the court if not disputed by the executor or administrator, and, if disputed, it may be proved and allowed or disallowed by the court as the facts may warrant. If the contingent claim is allowed, the creditor shall receive payment to the same extent as the other creditors if the estate retained by the executor or administrator is sufficient. But if the claim is not so presented, after having become absolute, within said two (2) years, and allowed, the assets retained in the hands of the executor or administrator, not exhausted in the payment of claims, shall be distributed by the order of the court to the persons entitled to the same; but the assets so distributed may still be applied to the payment of the claim when established, and the creditor may maintain an action against the distributees to recover the debt, and such distributees and their estates shall be liable for the debt in proportion to the estate they have respectively received from the property of the deceased.

SECTION 6. Court to fix contributive shares where devisees, legatees, or heirs have been in possession. — Where devisees, legatees, or heirs have entered into possession of portions of the estate before the debts and expenses have been settled and paid, and have become liable to contribute for the payment of such debts and expenses, the court having jurisdiction of the estate may, by order for that purpose, after hearing, settle the amount of their several liabilities, and order how much and in what manner each person shall contribute, and may issue execution as circumstances require.

SECTION 7. Order of payment if estate insolvent. — If the assets which can be appropriated for the payment of debts are not sufficient for that purpose, the executor or administrator shall pay the debts against the estate, observing the provisions of Articles 1059 and 2239 to 2251 of the Civil Code.

SECTION 8. Dividends to be paid in proportion to claims. — If there are no assets sufficient to pay the credits of any one class of creditors after paying the credits entitled to preference over it, each creditor within such class shall be paid a dividend in proportion to his claim. No creditor of any one class shall receive any payment until those of the preceding class are paid.

SECTION 9. Estate of insolvent nonresident, how disposed of . —

In case administration is taken in the Philippines of the estate of a person who was at the time of his death an inhabitant of another country, and who died insolvent, his estate found in the Philippines shall, as far as practicable, be so disposed of that his creditors here and elsewhere may receive each an equal share, in proportion to their respective credits.

SECTION 10. When and how claim proved outside the Philippines against insolvent resident's estate paid. — If it appears to the court having jurisdiction that claims have been duly proven in another country against the estate of an insolvent who was at the time of his death an inhabitant of the Philippines, and that the executor or administrator in the Philippines had knowledge of the presentation of such claims in such country and an opportunity to contest their allowance, the court shall receive a certified list of such claims, when perfected in such country, and add the same to the list of claims proved against the deceased person in the Philippines so that a just distribution of the whole estate may be made equally among all its creditors according to their respective claims; but the benefit of this and the preceding sections shall not be extended to the creditors in another country if the property of such deceased person there found is not equally apportioned to the creditors residing in the Philippines and the other creditors, according to their respective claims.

SECTION 11. Order for payment of debts. — Before the expiration of the time limited for the payment of the debts, the court shall order the payment thereof, and the distribution of the assets received by the executor or administrator for that purpose among the creditors, as the circumstances of the estate require and in accordance with the provisions of this rule.

SECTION 12. Orders relating to payment of debts where appeal is taken. — If an appeal has been taken from a decision of the court concerning a claim, the court may suspend the order for the payment of the debts or may order the distribution among the creditors whose claims are definitely allowed, leaving in the hands of the executor or administrator sufficient assets to pay the claim disputed and appealed. When a disputed claim is finally settled the court having jurisdiction of the estate shall order the same to be paid out of the

assets retained to the same extent and in the same proportion with the claims of other creditors.

SECTION 13. When subsequent distribution of assets ordered. — If the whole of the debts are not paid on the first distribution, and if the whole assets are not distributed, or other assets afterwards come to the hands of the executor or administrator, the court may from time to time make further orders for the distribution of assets.

SECTION 14. Creditors to be paid in accordance with terms of order. — When an order is made for the distribution of assets among the creditors, the executor or administrator shall, as soon as the time of payment arrives, pay the creditors the amounts of their claims, or the dividend thereon, in accordance with the terms of such order.

SECTION 15. Time for paying debts and legacies fixed, or extended after notice, within what periods. — On granting letters testamentary or administration the court shall allow to the executor or administrator a time for disposing of the estate and paying the debts and legacies of the deceased, which shall not, in the first instance, exceed one (1) year; but the court may, on application of the executor or administrator and after hearing on such notice of the time and place therefor given to all persons interested as it shall direct, extend the time as the circumstances of the estate require not exceeding six (6) months for a single extension nor so that the whole period allowed to the original executor or administrator shall exceed two (2) years.

SECTION 16. Successor of dead executor or administrator may have time extended on notice within certain period. — When an executor or administrator dies, and a new administrator of the same estate is appointed, the court may extend the time allowed for the payment of the debts or legacies beyond the time allowed to the original executor or administrator, not exceeding six (6) months at a time and not exceeding six (6) months beyond the time which the court might have allowed to such original executor or administrator; and notice shall be given of the time and place for hearing such application, as required in the last preceding section.

RULE 89

Sales, Mortgages, and Other Encumbrances of Property of Decedent

SECTION 1. Order of sale of personality. — Upon the application of the executor or administrator, and on written notice to the heirs and other persons interested, the court may order the whole or a part of the personal estate to be sold, if it appears necessary for the purpose of paying debts, expenses of administration, or legacies, or for the preservation of the property.

SECTION 2. When court may authorize sale, mortgage, or other encumbrance of realty to pay debts and legacies through personality not exhausted. — When the personal estate of the deceased is not sufficient to pay the debts, expenses of administration, and legacies, or where the sale of such personal estate may injure the business or other interests of those interested in the estate, and where a testator has not otherwise made sufficient provision for the payment of such debts, expenses, and legacies, the court, on the application of the executor or administrator and on written notice to the heirs, devisees, and legatees residing in the Philippines, may authorize the executor or administrator to sell, mortgage, or otherwise encumber so much as may be necessary of the real estate, in lieu of personal estate, for the purpose of paying such debts, expenses, and legacies, if it clearly appears that such sale, mortgage, or encumbrance would be beneficial to the persons interested; and if a part cannot be sold, mortgaged, or otherwise encumbered without injury to those interested in the remainder, the authority may be for the sale, mortgage, or other encumbrance of the whole of such real estate, or so much thereof as is necessary or beneficial under the circumstances.

SECTION 3. Persons interested may prevent such sale, etc., by giving bond. — No such authority to sell, mortgage, or otherwise encumber real or personal estate shall be granted if any person interested in the estate gives a bond, in a sum to be fixed by the court, conditioned to pay the debts, expenses of administration, and legacies within such time as the court directs; and such bond shall be for the security of the creditors, as well as of the executor or administrator, and may be prosecuted for the benefit of either.

SECTION 4. When court may authorize sale of estate as beneficial to interested persons. Disposal of proceeds. — When it appears that the sale of the whole or a part of the real or personal estate, will be beneficial to the heirs, devisees, legatees, and other interested persons, the court may, upon application of the executor or administrator and on written notice to the heirs, devisees and legatees who are interested in the estate to be sold, authorize the executor or administrator to sell the whole or a part of said estate, although not necessary to pay debts, legacies, or expenses of administration; but such authority shall not be granted if inconsistent with the provisions of a will. In case of such sale, the proceeds shall be assigned to the persons entitled to the estate in the proper proportions.

SECTION 5. When court may authorize sale, mortgage, or other encumbrance of estate to pay debts and legacies in other countries. — When the sale of personal estate, or the sale, mortgage, or other encumbrance of real estate is not necessary to pay the debts, expenses of administration, or legacies in the Philippines, but it appears from records and proceedings of a probate court in another country that the estate of the deceased in such other country is not sufficient to pay the debts, expenses of administration, and legacies there, the court here may authorize the executor or administrator to sell the personal estate or to sell, mortgage, or otherwise encumber the real estate for the payment of debts or legacies in the other country, in the same manner as for the payment of debts or legacies in the Philippines.

SECTION 6. When court may authorize sale, mortgage, or other encumbrance of realty acquired on execution or foreclosure. — The court may authorize an executor or administrator to sell, mortgage, or otherwise encumber real estate acquired by him on execution or foreclosure sale, under the same circumstances and under the same regulations as prescribed in this rule for the sale, mortgage, or other encumbrance of other real estate.

SECTION 7. Regulations for granting authority to sell, mortgage, or otherwise encumber estate. — The court having jurisdiction of the estate of the deceased may authorize the executor or administrator to sell personal estate, or to sell, mortgage, or otherwise encumber real

estate; in cases provided by these rules and when it appears necessary or beneficial, under the following regulations:

(a) The executor or administrator shall file a written petition setting forth the debts due from the deceased, the expenses of administration, the legacies, the value of the personal estate, the situation of the estate to be sold, mortgaged, or otherwise encumbered, and such other facts as show that the sale, mortgage, or other encumbrance is necessary or beneficial;

(b) The court shall thereupon fix a time and place for hearing such petition, and cause notice stating the nature of the petition, the reason for the same, and the time and place of hearing, to be given personally or by mail to the persons interested, and may cause such further notice to be given, by publication or otherwise, as it shall deem proper;

(c) If the court requires it, the executor or administrator shall give an additional bond, in such sum as the court directs, conditioned that such executor or administrator will account for the proceeds of the sale, mortgage, or other encumbrance;

(d) If the requirements in the preceding subdivisions of this section have been complied with, the court, by order stating such compliance, may authorize the executor or administrator to sell, mortgage, or otherwise encumber, in proper cases, such part of the estate as is deemed necessary, and in case of sale the court may authorize it to be public or private, as would be most beneficial to all parties concerned. The executor or administrator shall be furnished with a certified copy of such order;

(e) If the estate is to be sold at auction, the mode of giving notice of the time and place of the sale shall be governed by the provisions concerning notice of execution sale;

(f) There shall be recorded in the registry of deeds of the province in which the real estate thus sold, mortgaged, or otherwise encumbered is situated, a certified copy of the order of the court, together with the deed of the executor or administrator for such real

estate, which shall be as valid as if the deed had been executed by the deceased in his lifetime.

SECTION 8. When a court may authorize conveyance or realty which deceased contracted to convey. Notice. Effect of deed. — Where the deceased was in his lifetime under contract, binding in law, to deed real property, or an interest therein, the court having jurisdiction of the estate may, on application for that purpose, authorize the executor or administrator to convey such property according to such contract, or with such modifications as are agreed upon by the parties and approved by the court; and if the contract is to convey real property to the executor or administrator, the clerk of the court shall execute the deed. The deed executed by such executor, administrator, or clerk of court shall be as effectual to convey the property as if executed by the deceased in his lifetime; but no such conveyance shall be authorized until notice of the application for that purpose has been given personally or by mail to all persons interested, and such further notice has been given, by publication or otherwise, as the court deems proper; nor if the assets in the hands of the executor or administrator will thereby be reduced so as to prevent a creditor from receiving his full debt or diminish his dividend.

SECTION 9. When court may authorize conveyance of lands which deceased held in trust. — Where the deceased in his lifetime held real property in trust for another person, the court may, after notice given as required in the last preceding section, authorize the executor or administrator to deed such property to the person, or his executor or administrator, for whose use and benefit it was so held; and the court may order the execution of such trust, whether created by deed or by law.

RULE 90
Distribution and Partition of the Estate

SECTION 1. When order for distribution of residue made. — When the debts, funeral charges, and expenses of administration, the allowance to the widow, and inheritance tax, if any, chargeable to the estate in accordance with law, have been paid, the court, on the application of the executor or administrator, or of a person interested in the estate, and after hearing upon notice, shall assign the residue of

the estate to the persons entitled to the same, naming them and the proportions, or parts, to which each is entitled, and such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same in his possession. If there is a controversy before the court as to who are the lawful heirs of the deceased person or as to the distributive shares to which each person is entitled under the law, the controversy shall be heard and decided as in ordinary cases.

No distribution shall be allowed until the payment of the obligations above mentioned has been made or provided for, unless the distributees, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs.

SECTION 2. Questions as to advancement to be determined. — Questions as to advancement made, or alleged to have been made, by the deceased to any heir may be heard and determined by the court having jurisdiction of the estate proceedings; and the final order of the court thereon shall be binding on the person raising the questions and on the heir.

SECTION 3. By whom expenses of partition paid. — If at the time of the distribution the executor or administrator has retained sufficient effects in his hands which may lawfully be applied for the expenses of partition of the properties distributed, such expenses of partition may be paid by such executor or administrator when it appears equitable to the court and not inconsistent with the intention of the testator; otherwise, they shall be paid by the parties in proportion to their respective shares or interest in the premises, and the apportionment shall be settled and allowed by the court, and, if any person interested in the partition does not pay his proportion or share, the court may issue an execution in the name of the executor or administrator against the party not paying for the sum assessed.

SECTION 4. Recording the order of partition of estate. — Certified copies of final orders and judgments of the court relating to the real estate or the partition thereof shall be recorded in the registry of deeds of the province where the property is situated.

RULE 91
Escheats

SECTION 1. When and by whom petition filed. — When a person dies intestate, seized of real or personal property in the Philippines, leaving no heir or person by law entitled to the same, the Solicitor General or his representative in behalf of the Republic of the Philippines, may file a petition in the Court of First Instance of the province where the deceased last resided or in which he had estate, if he resided out of the Philippines, setting forth the facts, and praying that the estate of the deceased be declared escheated.

SECTION 2. Order for hearing. — If the petition is sufficient in form and substance, the court, by an order reciting the purpose of the petition, shall fix a date and place for the hearing thereof, which date shall be not more than six (6) months after the entry of the order, and shall direct that a copy of the order be published before the hearing at least once a week for six (6) successive weeks in some newspaper of general circulation published in the province, as the court shall deem best.

SECTION 3. Hearing and judgment. — Upon satisfactory proof in open court on the date fixed in the order that such order has been published as directed and that the person died intestate, seized of real or personal property in the Philippines, leaving no heir or person entitled to the same, and no sufficient cause being shown to the contrary, the court shall adjudge that the estate of the deceased in the Philippines, after the payment of just debts and charges, shall escheat; and shall, pursuant to law, assign the personal estate to the municipality or city where he last resided in the Philippines, and the real estate to the municipalities or cities, respectively, in which the same is situated. If the deceased never resided in the Philippines, the whole estate may be assigned to the respective municipalities or cities where the same is located. Such estate shall be for the benefit of public schools, and public charitable institutions and centers in said municipalities or cities.

The court, at the instance of an interested party, or on its own motion, may order the establishment of a permanent trust, so that only the income from the property shall be used.

SECTION 4. When and by whom claim to estate filed. — If a devisee, legatee, heir, widow, widower or other person entitled to such estate appears and files a claim thereto with the court within five (5) years from the date of such judgment, such person shall have possession of and title to the same, or if sold, the municipality or city shall be accountable to him for the proceeds, after deducting reasonable charges for the care of the estate; but a claim not made within said time shall be forever barred.

SECTION 5. Other actions for escheat. — Until otherwise provided by law, actions for reversion or escheat of properties alienated in violation of the Constitution or of any statute shall be governed by this rule, except that the action shall be instituted in the province where the land lies in whole or in part.

GENERAL GUARDIANS AND GUARDIANSHIP

RULE 92
Venue

SECTION 1. Where to institute proceedings. — Guardianship of the person or estate of a minor or incompetent may be instituted in the Court of First Instance of the province, or in the justice of the peace court of the municipality, or in the municipal court of the chartered city where the minor or incompetent person resides, and if he resides in a foreign country, in the Court of First Instance of the province wherein his property or part thereof is situated; provided, however, that where the value of the property of such minor or incompetent exceeds the jurisdiction of the justice of the peace or municipal court, the proceedings shall be instituted in the Court of First Instance.

In the City of Manila the proceedings shall be instituted in the Juvenile and Domestic Relations Court.

SECTION 2. Meaning of word “incompetent.” — Under this rule, the word “incompetent” includes persons suffering the penalty of civil interdiction or who are hospitalized lepers, prodigals, deaf and dumb who are unable to read and write, those who are of unsound mind,

even though they have lucid intervals, and persons not being of unsound mind, but by reason of age, disease, weak mind, and other similar causes, cannot, without outside aid, take care of themselves and manage their property, becoming thereby an easy prey for deceit and exploitation.

SECTION 3. Transfer of venue. — The court taking cognizance of a guardianship proceeding, may transfer the same to the court of another province or municipality wherein the ward has acquired real property, if he has transferred thereto his bona-fide residence, and the latter court shall have full jurisdiction to continue the proceedings, without requiring payment of additional court fees.

RULE 93
Appointment of Guardians

SECTION 1. Who may petition for appointment of guardian for resident. — Any relative, friend, or other person on behalf of a resident minor or incompetent who has no parent or lawful guardian, or the minor himself if fourteen years of age or over, may petition the court having jurisdiction for the appointment of a general guardian for the person or estate, or both, of such minor or incompetent. An officer of the Federal Administration of the United States in the Philippines may also file a petition in favor of a ward thereof, and the Director of Health, in favor of an insane person who should be hospitalized, or in favor of an isolated leper.

SECTION 2. Contents of petition. — A petition for the appointment of a general guardian must show, so far as known to the petitioner:

(a) The jurisdictional facts;

(b) The minority or incompetency rendering the appointment necessary or convenient;

(c) The names, ages, and residences of the relatives of the minor or incompetent, and of the persons having him in their care;

(d) The probable value and character of his estate;

(e) The name of the person for whom letters of guardianship are prayed.

The petition shall be verified; but no defect in the petition or verification shall render void the issuance of letters of guardianship.

SECTION 3. Court to set time for hearing. Notice thereof . — When a petition for the appointment of a general guardian is filed, the court shall fix a time and place for hearing the same, and shall cause reasonable notice thereof to be given to the persons mentioned in the petition residing in the province, including the minor if above 14 years of age or the incompetent himself, and may direct other general or special notice thereof to be given.

SECTION 4. Opposition to petition. — Any interested person may, by filing a written opposition, contest the petition on the ground of majority of the alleged minor, competency of the alleged incompetent, or the unsuitability of the person for whom letters are prayed, and may pray that the petition be dismissed, or that letters of guardianship issue to himself, or to any suitable person named in the opposition.

SECTION 5. Hearing and order for letters to issue. — At the hearing of the petition the alleged incompetent must be present if able to attend, and it must be shown that the required notice has been given. Thereupon the court shall hear the evidence of the parties in support of their respective allegations, and, if the person in question is a minor, or incompetent it shall appoint a suitable guardian of his person or estate, or both, with the powers and duties hereinafter specified.

SECTION 6. When and how guardian for nonresident appointed. Notice. — When a person liable to be put under guardianship resides without the Philippines but has estate therein, any relative or friend of such person, or any one interested in his estate, in expectancy or otherwise, may petition a court having jurisdiction for the appointment of a guardian for the estate, and if, after notice given to such person and in such manner as the court deems proper, by publication or otherwise, and hearing, the court is satisfied that such

nonresident is a minor or incompetent rendering a guardian necessary or convenient, it may appoint a guardian for such estate.

SECTION 7. Parents as guardians. — When the property of the child under parental authority is worth two thousand pesos or less, the father or the mother, without the necessity of court appointment, shall be his legal guardian. When the property of the child is worth more than two thousand pesos, the father or the mother shall be considered guardian of the child's property, with the duties and obligations of guardians under these rules, and shall file the petition required by section 2 hereof. For good reasons the court may, however, appoint another suitable person.

SECTION 8. Service of judgment. — Final orders or judgments under this rule shall be served upon the civil registrar of the municipality or city where the minor or incompetent person resides or where his property or part thereof is situated.

RULE 94
Bonds of Guardians

SECTION 1. Bond to be given before issuance of letters. Amount. Conditions. — Before a guardian appointed enters upon the execution of his trust, or letters of guardianship issue, he shall give a bond, in such sum as the court directs, conditioned as follows:

(a) To make and return to the court, within three (3) months, a true and complete inventory of all the estate, real and personal, of his ward which shall come to his possession or knowledge or to the possession or knowledge of any other person for him;

(b) To faithfully execute the duties of his trust, to manage and dispose of the estate according to these rules for the best interests of the ward, and to provide for the proper care, custody, and education of the ward;

(c) To render a true and just account of all the estate of the ward in his hands, and of all proceeds or interest derived therefrom, and of the management and disposition of the same, at the time designated by these rules and such other times as the court directs; and at the

expiration of his trust to settle his accounts with the court and deliver and pay over all the estate, effects, and moneys remaining in his hands, or due from him on such settlement, to the person lawfully entitled thereto;

(d) To perform all orders of the court by him to be performed.

SECTION 2. When new bond may be required and old sureties discharged. — Whenever it is deemed necessary, the court may require a new bond to be given by the guardian, and may discharge the sureties on the old bond from further liability, after due notice to interested persons, when no injury can result therefrom to those interested in the estate.

SECTION 3. Bonds to be filed. Actions thereon. — Every bond given by a guardian shall be filed in the office of the clerk of the court, and, in case of the breach of a condition thereof, may be prosecuted in the same proceeding or in a separate action for the use and benefit of the ward or of any other person legally interested in the estate.

RULE 95
Selling and Encumbering Property of Ward

SECTION 1. Petition of guardian for leave to sell or encumber estate. — When the income of an estate under guardianship is insufficient to maintain the ward and his family, or to maintain and educate the ward when a minor, or when it appears that it is for the benefit of the ward that his real estate or some part thereof be sold, or mortgaged or otherwise encumbered, and the proceeds thereof put out at interest, or invested in some productive security, or in the improvement or security of other real estate of the ward, the guardian may present a verified petition to the court by which he was appointed setting forth such facts, and praying that an order issue authorizing the sale or encumbrance.

SECTION 2. Order to show cause thereupon. — If it seems probable that such sale or encumbrance is necessary, or would be beneficial to the ward, the court shall make an order directing the next of kin of the ward, and all persons interested in the estate, to

appear at a reasonable time and place therein specified to show cause why the prayer of the petition should not be granted.

SECTION 3. Hearing on return of order. Costs. — At the time and place designated in the order to show cause, the court shall hear the proofs and allegations of the petitioner and next of kin, and other persons interested, together with their witnesses, and grant or refuse the prayer of the petition as the best interests of the ward require. The court shall make such order as to costs of the hearing as may be just.

SECTION 4. Contents of order for sale or encumbrance, and how long effective. Bond. — If, after full examination, it appears that it is necessary, or would be beneficial to the ward, to sell or encumber the estate, or some portion of it, the court shall order such sale or encumbrance and that the proceeds thereof be expended for the maintenance of the ward and his family, or the education of the ward, if a minor, or for the putting of the same out at interest, or the investment of the same as the circumstances may require. The order shall specify the causes why the sale or encumbrance is necessary or beneficial, and may direct that estate ordered sold be disposed of at either public or private sale, subject to such conditions as to the time and manner of payment, and security where a part of the payment is deferred, as in the discretion of the court are deemed most beneficial to the ward. The original bond of the guardian shall stand as security for the proper appropriation of the proceeds of the sale, but the judge may, if deemed expedient, require an additional bond as a condition for the granting of the order of sale. No order of sale granted in pursuance of this section shall continue in force more than one (1) year after granting the same, without a sale being had.

SECTION 5. Court may order investment of proceeds and direct management of estate. — The court may authorize and require the guardian to invest the proceeds of sales or encumbrances, and any other of his ward's money in his hands, in real estate or otherwise, as shall be for the best interest of all concerned, and may make such other orders for the management, investment, and disposition of the estate and effects, as circumstances may require.

RULE 96
General Powers and Duties of Guardians

SECTION 1. To what guardianship shall extend. — A guardian appointed shall have the care and custody of the person of his ward, and the management of his estate, or the management of the estate only, as the case may be. The guardian of the estate of a nonresident shall have the management of all the estate of the ward within the Philippines, and no court other than that in which such guardian was appointed shall have jurisdiction over the guardianship.

SECTION 2. Guardian to pay debts of ward. — Every guardian must pay the ward's just debts out of his personal estate and the income of his real estate, if sufficient; if not, then out of his real estate upon obtaining an order for the sale or encumbrance thereof.

SECTION 3. Guardian to settle accounts, collect debts, and appear in actions for ward. — A guardian must settle all accounts of his ward, and demand, sue for, and receive all debts due him, or may, with the approval of the court, compound for the same and give discharges to the debtor, on receiving a fair and just dividend of the estate and effects; and he shall appear for and represent his ward in all actions and special proceedings, unless another person be appointed for that purpose.

SECTION 4. Estate to be managed frugally, and proceeds applied to maintenance of ward. — A guardian must manage the estate of his ward frugally and without waste, and apply the income and profits thereof, so far as may be necessary, to the comfortable and suitable maintenance of the ward and his family, if there be any; and if such income and profits be insufficient for that purpose, the guardian may sell or encumber the real estate, upon being authorized by order so to do, and apply so much of the proceeds as may be necessary to such maintenance.

SECTION 5. Guardian may be authorized to join in partition proceedings after hearing. — The court may authorize the guardian to join in an assent to a partition of real or personal estate held by the ward jointly or in common with others, but such authority shall only be granted after hearing, upon such notice to relatives of the ward as the court may direct, and a careful investigation as to the necessity and propriety of the proposed action.

SECTION 6. Proceedings when person suspected of embezzling or concealing property of ward. — Upon complaint of the guardian or ward, or of any person having actual or prospective interest in the estate of the ward as creditor, heir, or otherwise, that anyone is suspected of having embezzled, concealed, or conveyed away any money, goods, or interest, or a written instrument, belonging to the ward or his estate, the court may cite the suspected person to appear for examination touching such money, goods, interest, or instrument, and make such orders as will secure the estate against such embezzlement, concealment or conveyance.

SECTION 7. Inventories and accounts of guardians, and appraisement of estates. — A guardian must render to the court an inventory of the estate of his ward within three (3) months after his appointment, and annually after such appointment an inventory and account, the rendition of any of which may be compelled upon the application of an interested person. Such inventories and accounts shall be sworn to by the guardian. All the estate of the ward described in the first inventory shall be appraised. In the appraisement the court may request the assistance of one or more of the inheritance tax appraisers. And whenever any property of the ward not included in an inventory already rendered is discovered, or succeeded to, or acquired by the ward, like proceedings shall be had for securing an inventory and appraisement thereof within three (3) months after such discovery, succession, or acquisition.

SECTION 8. When guardian's accounts presented for settlement. Expenses and compensation allowed. — Upon the expiration of a year from the time of his appointment, and as often thereafter as may be required, a guardian must present his account to the court for settlement and allowance. In the settlement of the account, the guardian, other than a parent, shall be allowed the amount of his reasonable expenses incurred in the execution of his trust and also such compensation for his services as the court deems just, not exceeding fifteen per centum of the net income of the ward.

RULE 97
Termination of Guardianship

SECTION 1. Petition that competency of ward be adjudged, and proceedings thereupon. — A person who has been declared incompetent for any reason, or his guardian, relative, or friend, may petition the court to have his present competency judicially determined. The petition shall be verified by oath, and shall state that such person is then competent. Upon receiving the petition, the court shall fix a time for hearing the questions raised thereby, and cause reasonable notice thereof to be given to the guardian of the person so declared incompetent, and to the ward. On the trial, the guardian or relatives of the ward, and, in the discretion of the court, any other person, may contest the right to the relief demanded, and witnesses may be called and examined by the parties or by the court on its own motion. If it be found that the person is no longer incompetent, his competency shall be adjudged and the guardianship shall cease.

SECTION 2. When guardian removed or allowed to resign. New appointment. — When a guardian becomes insane or otherwise incapable of discharging his trust or unsuitable therefor, or has wasted or mismanaged the estate, or failed for thirty (30) days after it is due to render an account or make a return, the court may, upon reasonable notice to the guardian, remove him, and compel him to surrender the estate of the ward to the person found to be lawfully entitled thereto. A guardian may resign when it appears proper to allow the same; and upon his resignation or removal the court may appoint another in his place.

SECTION 3. Other termination of guardianship. — The marriage or voluntary emancipation of a minor ward terminates the guardianship of the person of the ward, and shall enable the minor to administer his property as though he were of age, but he cannot borrow money or alienate or encumber real property without the consent of his father or mother, or guardian. He can sue and be sued in court only with the assistance of his father, mother or guardian. The guardian of any person may be discharged by the court when it appears, upon the application of the ward or otherwise, that the guardianship is no longer necessary.

SECTION 4. Record to be kept by the justice of the peace or municipal judge. — When a justice of the peace or municipal court takes cognizance of the proceedings in pursuance of the provisions of

these rules, the record of the proceedings shall be kept as in the court of first instance.

SECTION 5. Service of judgment. — Final orders or judgments under this rule shall be served upon the civil registrar of the municipality or city where the minor or incompetent person resides or where his property or part thereof is situated.

RULE 98
Trustees

SECTION 1. Where trustee appointed. — A trustee necessary to carry into effect the provisions of a will or written instrument shall be appointed by the Court of First Instance in which the will was allowed if it be a will allowed in the Philippines, otherwise by the Court of First Instance of the province in which the property, or some portion thereof, affected by the trust is situated.

SECTION 2. Appointment and powers of trustee under will. Executor of former trustee need not administer trust. — If a testator has omitted in his will to appoint a trustee in the Philippines, and if such appointment is necessary to carry into effect the provisions of the will, the proper Court of First Instance may, after notice to all persons interested, appoint a trustee who shall have the same rights, powers, and duties, and in whom the estate shall vest, as if he had been appointed by the testator. No person succeeding to a trust as executor or administrator of a former trustee shall be required to accept such trust.

SECTION 3. Appointment and powers of new trustee under written instrument. — When a trustee under a written instrument declines, resigns, dies, or is removed before the objects of the trust are accomplished, and no adequate provision is made in such instrument for supplying the vacancy, the proper Court of First Instance may, after due notice to all persons interested, appoint a new trustee to act alone or jointly with the others, as the case may be. Such new trustee shall have and exercise the same powers, rights, and duties as if he had been originally appointed, and the trust estate shall vest in him in like manner as it had vested or would have vested, in the trustee in whose place he is substituted; and the court may order

such conveyance to be made by the former trustee or his representatives, or by the other remaining trustees, as may be necessary or proper to vest the trust estate in the new trustee, either alone or jointly with the others.

SECTION 4. Proceedings where trustee appointed abroad. — When land in the Philippines is held in trust for persons resident here by a trustee who derives his authority from without the Philippines, such trustee shall, on petition filed in the Court of First Instance of province where the land is situated, and after due notice to all persons interested, be ordered to apply to the court for appointment as trustee; and upon his neglect or refusal to comply with such order, the court shall declare such trust vacant, and shall appoint a new trustee in whom the trust estate shall vest in like manner as if he had been originally appointed by such court.

SECTION 5. Trustee must file bond. — Before entering on the duties of his trust, a trustee shall file with the clerk of the court having jurisdiction of the trust a bond in the amount fixed by the judge of said court, payable to the Government of the Philippines and sufficient and available for the protection of any party in interest, and a trustee who neglects to file such bond shall be considered to have declined or resigned the trust; but the court may until further order exempt a trustee under a will from giving a bond when the testator has directed or requested such exemption, and may so exempt any trustee when all persons beneficially interested in the trust, being of full age, request the exemption. Such exemption may be cancelled by the court at any time and the trustee required to forthwith file a bond.

SECTION 6. Conditions included in bond. — The following conditions shall be deemed to be a part of the bond whether written therein or not:

(a) That the trustee will make and return to the court, at such time as it may order, a true inventory of all the real and personal estate belonging to him as trustee, which at the time of the making of such inventory shall have come to his possession or knowledge;

(b) That he will manage and dispose of all such estate, and faithfully discharge his trust in relation thereto, according to law and

the will of the testator or the provisions of the instrument or order under which he is appointed;

(c) That he will render upon oath at least once a year until his trust is fulfilled, unless he is excused therefrom in any year by the court, a true account of the property in his hands and of the management and disposition thereof, and will render such other accounts as the court may order;

(d) That at the expiration of his trust he will settle his accounts in court and pay over and deliver all the estate remaining in his hands, or due from him on such settlement, to the person or persons entitled thereto.

But when the trustee is appointed as a successor to a prior trustee, the court may dispense with the making and return of an inventory, if one has already been filed, and in such case the condition of the bond shall be deemed to be altered accordingly.

SECTION 7. Appraisal. Compensation of trustee. — When an inventory is required to be returned by a trustee, the estate and effects belonging to the trust shall be appraised and the court may order one or more inheritance tax appraisers to assist in the appraisement. The compensation of the trustee shall be fixed by the court, if it be not determined in the instrument creating the trust.

SECTION 8. Removal or resignation of trustee. — The proper Court of First Instance may, upon petition of the parties beneficially interested and after due notice to the trustee and hearing, remove a trustee if such removal appears essential in the interests of the petitioners. The court may also, after due notice to all persons interested, remove a trustee who is insane or otherwise incapable of discharging his trust or evidently unsuitable therefor. A trustee, whether appointed by the court or under a written instrument, may resign his trust if it appears to the court proper to allow such resignation.

SECTION 9. Proceedings for sale or encumbrance of trust estate. — When the sale or encumbrance of any real or personal estate held in trust is necessary or expedient, the court having jurisdiction of the

trust may, on petition and after due notice and hearing, order such sale or encumbrance to be made, and the reinvestment and application of the proceeds thereof in such manner as will best effect the objects of the trust. The petition, notice, hearing, order of sale or encumbrance, and record of proceedings, shall conform as nearly as may be to the provisions concerning the sale or encumbrance by guardians of the property of minors or other wards.

RULE 99
Adoption and Custody of Minors

SECTION 1. Venue. — A person desiring to adopt another or have the custody of a minor shall present his petition to the Court of First Instance of the province, or the municipal or justice of the peace court of the city or municipality in which he resides.

In the City of Manila, the proceedings shall be instituted in the Juvenile and Domestic Relations Court.

SECTION 2. Contents of petition. — The petition for adoption shall contain the same allegations required in a petition for guardianship, to wit:

(a) The jurisdictional facts;

(b) The qualifications of the adopter;

(c) That the adopter is not disqualified by law;

(d) The name, age, and residence of the person to be adopted and of his relatives or of the persons who have him under their care;

(e) The probable value and character of the estate of the person to be adopted.

SECTION 3. Consent to adoption. — There shall be filed with the petition a written consent to the adoption signed by the child, if fourteen years of age or over and not incompetent, and by the child's spouse, if any, and by each of its known living parents who is not insane or hopelessly intemperate or has not abandoned such child, or

if there are no such parents by the general guardian or guardian ad litem of the child, or if the child is in the custody of an orphan asylum, children's home, or benevolent society or person, by the proper officer or officers of such asylum, home, or society, or by such person; but if the child is illegitimate and has not been recognized, the consent of its father to the adoption shall not be required.

If the person to be adopted is of age, only his or her consent and that of the spouse, if any, shall be required.

SECTION 4. Order for hearing. — If the petition and consent filed are sufficient in form and substance, the court, by an order reciting the purpose of the petition, shall fix a date and place for the hearing thereof, which date shall not be more than six (6) months after the entry of the order, and shall direct that a copy of the order be published before the hearing at least once a week for three (3) successive weeks in some newspaper of general circulation published in the province, as the court shall deem best.

SECTION 5. Hearing and judgment. — Upon satisfactory proof in open court on the date fixed in the order that such order has been published as directed, that the allegations of the petition are true, and that it is a proper case for adoption and the petitioner or petitioners are able to bring up and educate the child properly, the court shall adjudge that thenceforth the child is freed from all legal obligations of obedience and maintenance with respect to its natural parents, except the mother when the child is adopted by her husband, and is, to all legal intents and purposes, the child of the petitioner or petitioners, and that its surname is changed to that of the petitioner or petitioners. The adopted person or child shall thereupon become the legal heir of his parents by adoption and shall also remain the legal heir of his natural parents. In case of the death of the adopted person or child, his parents and relatives by nature, and not by adoption, shall be his legal heirs.

SECTION 6. Proceedings as to child whose parents are separated. Appeal. — When husband and wife are divorced or living separately and apart from each other, and the question as to the care, custody, and control of a child or children of their marriage is brought before a Court of First Instance by petition or as an incident to any

other proceeding, the court, upon hearing the testimony as may be pertinent, shall award the care, custody, and control of each such child as will be for its best interest, permitting the child to choose which parent it prefers to live with if it be over ten years of age, unless the parent so chosen be unfit to take charge of the child by reason of moral depravity, habitual drunkenness, incapacity, or poverty. If, upon such hearing, it appears that both parents are improper persons to have the care, custody, and control of the child, the court may either designate the paternal or maternal grandparent of the child, or his oldest brother or sister, or some reputable and discreet person to take charge of such child, or commit it to any suitable asylum, children's home, or benevolent society. The court may in conformity with the provisions of the Civil Code order either or both parents to support or help support said child, irrespective of who may be its custodian, and may make any order that is just and reasonable permitting the parent who is deprived of its care and custody to visit the child or have temporary custody thereof. Either parent may appeal from an order made in accordance with the provisions of this section. No child under seven years of age shall be separated from its mother, unless the court finds there are compelling reasons therefor.

SECTION 7. Proceedings as to vagrant or abused child. — When the parents of any minor child are dead, or by reason of long absence or legal or physical disability have abandoned it, or cannot support it through vagrancy, negligence, or misconduct, or neglect or refuse to support it, or treat it with excessive harshness or give it corrupting orders, counsels, or examples, or cause or allow it to engage in begging, or to commit offenses against the law, the proper Court of First Instance, upon petition filed by some reputable resident of the province setting forth the facts, may issue an order requiring such parents to show cause, or, if the parents are dead or cannot be found, requiring the fiscal of the province to show cause, at a time and place fixed in the order, why the child should not be taken from its parents, if living; and if upon the hearing it appears that the allegations of the petition are true, and that it is for the best interest of the child, the court may make an order taking it from its parents, if living; and committing it to any suitable orphan asylum, children's home, or benevolent society or person to be ultimately placed, by adoption or otherwise, in a home found for it by such asylum, children's home, society or person.

SECTION 8. Service of judgment. — Final orders or judgments under this rule shall be served by the clerk upon the civil registrar of the city or municipality wherein the court issuing the same is situated.

RULE 100
Rescission and Revocation of Adoption

SECTION 1. Who may file petition; grounds. — A minor or other incapacitated person may, through a guardian or guardian ad litem, petition for the rescission or revocation of his or her adoption for the same causes that authorize the deprivation of parental authority.

The adopter may, likewise, petition the court for the rescission or revocation of the adoption in any of these cases:

(a) If the adopted person has attempted against the life of the adopter;

(b) When the adopted minor has abandoned the home of the adopter for more than three (3) years;

(c) When by other acts the adopted person has repudiated the adoption.

SECTION 2. Order to answer. — The court in which the petition is filed shall issue an order requiring the adverse party to answer the petition within fifteen (15) days from receipt of a copy thereof. The order and a copy of the petition shall be served on the adverse party in such manner as the court may direct.

SECTION 3. Judgment. — If upon trial, on the day set therefor, the court finds that the allegations of the petition are true, it shall render judgment ordering the rescission or revocation of the adoption, with or without costs, as justice requires.

SECTION 4. Service of judgment. — A certified copy of the judgment rendered in accordance with the next preceding section shall be served upon the civil registrar concerned, within thirty (30)

days from rendition thereof, who shall forthwith enter the action taken by the court in the register.

SECTION 5. Time within which to file petition. — A minor or other incapacitated person must file the petition for rescission or revocation of adoption within the five (5) years following his majority, or if he was incompetent at the time of the adoption, within the five (5) years following the recovery from such incompetency.

The adopter must also file the petition to set aside the adoption within five (5) years from the time the cause or causes giving rise to the rescission or revocation of the same took place.

RULE 101
Proceedings for Hospitalization of Insane Persons

SECTION 1. Venue. Petition for commitment. — A petition for the commitment of a person to a hospital or other place for the insane may be filed with the Court of First Instance of the province where the person alleged to be insane is found. The petition shall be filed by the Director of Health in all cases where, in his opinion, such commitment is for the public welfare, or for the welfare of said person who, in his judgment, is insane, and such person or the one having charge of him is opposed to his being taken to a hospital or other place for the insane.

SECTION 2. Order for hearing. — If the petition filed is sufficient in form and substance, the court, by an order reciting the purpose of the petition, shall fix a date for the hearing thereof, and copy of such order shall be served on the person alleged to be insane, and to the one having charge of him, or on such of his relatives residing in the province or city as the judge may deem proper. The court shall furthermore order the sheriff to produce the alleged insane person, if possible, on the date of the hearing.

SECTION 3. Hearing and judgment. — Upon satisfactory proof, in open court on the date fixed in the order, that the commitment applied for is for the public welfare or for the welfare of the insane person, and that his relatives are unable for any reason to take proper custody and care of him, the court shall order his commitment to

such hospital or other place for the insane as may be recommended by the Director of Health. The court shall make proper provisions for the custody of property or money belonging to the insane until a guardian be properly appointed.

SECTION 4. Discharge of insane. — When, in the opinion of the Director of Health, the person ordered to be committed to a hospital or other place for the insane is temporarily or permanently cured, or may be released without danger he may file the proper petition with the Court of First Instance which ordered the commitment.

SECTION 5. Assistance of fiscal in the proceeding. — It shall be the duty of the provincial fiscal or in the City of Manila the fiscal of the city, to prepare the petition for the Director of Health and represent him in court in all proceedings arising under the provisions of this rule.

RULE 102
Habeas Corpus

SECTION 1. To what habeas corpus extends. — Except as otherwise expressly provided by law, the writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto.

SECTION 2. Who may grant the writ. — The writ of habeas corpus may be granted by the Supreme Court, or any member thereof, on any day and at any time, or by the Court of Appeals or any member thereof in the instances authorized by law, and if so granted it shall be enforceable anywhere in the Philippines, and may be made returnable before the court or any member thereof, or before a Court of First Instance, or any judge thereof for the hearing and decision on the merits. It may also be granted by a Court of First Instance, or a judge thereof, on any day and at any time, and returnable before himself, enforceable only within his judicial district.

SECTION 3. Requisites of application therefor. — Application for the writ shall be by petition signed and verified either by the party for

whose relief it is intended, or by some person on his behalf, and shall set forth:

(a) That the person in whose behalf the application is made is imprisoned or restrained of his liberty;

(b) The officer or name of the person by whom he is so imprisoned or restrained; or, if both are unknown or uncertain, such officer or person may be described by an assumed appellation, and the person who is served with the writ shall be deemed the person intended;

(c) The place where he is so imprisoned or restrained, if known;

(d) A copy of the commitment or cause of detention of such person, if it can be procured without impairing the efficiency of the remedy; or, if the imprisonment or restraint is without any legal authority, such fact shall appear.

SECTION 4. When writ not allowed or discharge authorized. — If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment.

SECTION 5. When the writ must be granted and issued. — A court or judge authorized to grant the writ must, when a petition therefor is presented and it appears that the writ ought to issue, grant the same forthwith, and immediately thereupon the clerk of the court shall issue the writ under the seal of the court; or in case of emergency, the judge may issue the writ under his own hand, and may depute any officer or person to serve it.

SECTION 6. To whom writ directed, and what to require. — In case of imprisonment or restraint by an officer, the writ shall be directed to him, and shall command him to have the body of the person restrained of his liberty before the court or judge designated in the writ at the time and place therein specified. In case of imprisonment or restraint by a person not an officer, the writ shall be directed to an officer, and shall command him to take and have the body of the person restrained of his liberty before the court or judge designated in the writ at the time and place therein specified, and to summon the person by whom he is restrained then and there to appear before said court or judge to show the cause of the imprisonment or restraint.

SECTION 7. How prisoner designated and writ served. — The person to be produced should be designated in the writ by his name, if known, but if his name is not known he may be otherwise described or identified. The writ may be served in any province by the sheriff or other proper officer, or by a person deputed by the court or judge. Service of the writ shall be made by leaving the original with the person to whom it is directed and preserving a copy on which to make return of service. If that person cannot be found, or has not the prisoner in his custody, then the service shall be made on any other person having or exercising such custody.

SECTION 8. How writ executed and returned. — The officer to whom the writ is directed shall convey the person so imprisoned or restrained, and named in the writ, before the judge allowing the writ, or, in case of his absence or disability, before some other judge of the same court, on the day specified in the writ, unless, from sickness or infirmity of the person directed to be produced, such person cannot, without danger, be brought before the court or judge; and the officer shall make due return of the writ, together with the day and the cause of the caption and restraint of such person according to the command thereof.

SECTION 9. Defect of form. — No writ of habeas corpus can be disobeyed for defect of form, if it sufficiently appears therefrom in whose custody or under whose restraint the party imprisoned or restrained is held and the court or judge before whom he is to be brought.

SECTION 10. Contents of return. — When the person to be produced is imprisoned or restrained by an officer, the person who makes the return shall state therein, and in other cases the person in whose custody the prisoner is found shall state, in writing to the court or judge before whom the writ is returnable, plainly and unequivocably:

(a) Whether he has or has not the party in his custody or power, or under restraint;

(b) If he has the party in his custody or power, or under restraint, the authority and the true and whole cause thereof, set forth at large, with a copy of the writ, order, execution, or other process, if any, upon which the party is held;

(c) If the party is in his custody or power or is restrained by him, and is not produced, particularly the nature and gravity of the sickness or infirmity of such party by reason of which he cannot, without danger, be brought before the court or judge;

(d) If he has had the party in his custody or power, or under restraint, and has transferred such custody or restraint to another, particularly to whom, at what time, for what cause, and by what authority such transfer was made.

SECTION 11. Return to be signed and sworn to. — The return or statement shall be signed by the person who makes it; and shall also be sworn to by him if the prisoner is not produced, and in all other cases unless the return is made and signed by a sworn public officer in his official capacity.

SECTION 12. Hearing on return. Adjournments. — When the writ is returned before one judge, at a time when the court is in session, he may forthwith adjourn the case into the court, there to be heard and determined. The court or judge before whom the writ is returned or adjourned must immediately proceed to hear and examine the return, and such other matters as are properly submitted for consideration, unless for good cause shown the hearing is adjourned, in which event the court or judge shall make such order for the safekeeping of the

person imprisoned or restrained as the nature of the case requires. If the person imprisoned or restrained is not produced because of his alleged sickness or infirmity, the court or judge must be satisfied that it is so grave that such person cannot be produced without danger, before proceeding to hear and dispose of the matter. On the hearing the court or judge shall disregard matters of form and technicalities in respect to any warrant or order of commitment of a court or officer authorized to commit by law.

SECTION 13. When the return evidence, and when only a plea. — If it appears that the prisoner is in custody under a warrant of commitment in pursuance of law, the return shall be considered prima facie evidence of the cause of restraint; but if he is restrained of his liberty by any alleged private authority, the return shall be considered only as a plea of the facts therein set forth, and the party claiming the custody must prove such facts.

SECTION 14. When person lawfully imprisoned recommitted, and when let to bail. — If it appears that the prisoner was lawfully committed, and is plainly and specifically charged in the warrant of commitment with an offense punishable by death, he shall not be released, discharged, or bailed. If he is lawfully imprisoned or restrained on a charge of having committed an offense not so punishable, he may be recommitted to imprisonment or admitted to bail in the discretion of the court or judge. If he be admitted to bail, he shall forthwith file a bond in such sum as the court or judge deems reasonable, considering the circumstances of the prisoner and the nature of the offense charged, conditioned for his appearance before the court where the offense is properly cognizable to abide its order or judgment; and the court or judge shall certify the proceedings, together with the bond, forthwith to the proper court. If such bond is not so filed, the prisoner shall be recommitted to confinement.

SECTION 15. When prisoner discharged if no appeal. — When the court or judge has examined into the cause of caption and restraint of the prisoner, and is satisfied that he is unlawfully imprisoned or restrained, he shall forthwith order his discharge from confinement, but such discharge shall not be effective until a copy of the order has been served on the officer or person detaining the prisoner. If the

officer or person detaining the prisoner does not desire to appeal, the prisoner shall be forthwith released.

SECTION 16. Penalty for refusing to issue writ, or for disobeying the same. — A clerk of a court who refuses to issue the writ after allowance thereof and demand therefor, or a person to whom a writ is directed, who neglects or refuses to obey or make return of the same according to the command thereof, or makes false return thereof, or who, upon demand made by or on behalf of the prisoner, refuses to deliver to the person demanding, within six (6) hours after the demand therefor, a true copy of the warrant or order of commitment, shall forfeit to the party aggrieved the sum of one thousand pesos, to be recovered in a proper action, and may also be punished by the court or judge as for contempt.

SECTION 17. Person discharged not to be given imprisoned. — A person who is set at liberty upon a writ of habeas corpus shall not be again imprisoned for the same offense unless by the lawful order or process of a court having jurisdiction of the cause or offense; and a person who knowingly, contrary to the provisions of this rule, recommits or imprisons, or causes to be committed or imprisoned, for the same offense, or pretended offense, any person so set at liberty, or knowingly aids or assists therein, shall forfeit to the party aggrieved the sum of one thousand pesos, to be recovered in a proper action, notwithstanding any colorable pretense or variation in the warrant of commitment, and may also be punished by the court or judge granting writ as for contempt.

SECTION 18. When prisoner may be removed from one custody to another. — A person committed to prison, or in custody of an officer, for any criminal matter, shall not be removed therefrom into the custody of another officer unless by legal process, or the prisoner be delivered to an inferior officer to carry to jail, or, by order of the proper court or judge, be removed from one place to another within the Philippines for trial, or in case of fire, epidemic, insurrection, or other necessity or public calamity; and a person who, after such commitment, makes, signs, or countersigns any order for such removal contrary to this section, shall forfeit to the party aggrieved the sum of one thousand pesos, to be recovered in a proper action.

SECTION 19. Record of writ, fees and costs. — The proceedings upon a writ of habeas corpus shall be recorded by the clerk of the court, and upon the final disposition of such proceedings the court or judge shall make such order as to costs as the case requires. The fees of officers and witnesses shall be included in the costs taxed, but no officer or person shall have the right to demand payment in advance of any fees to which he is entitled by virtue of the proceedings. When a person confined under color of proceedings in a criminal case is discharged, the costs shall be taxed against the Republic of the Philippines, and paid out of its Treasury; when a person in custody by virtue or under color of proceedings in a civil case is discharged, the costs shall be taxed against him, or against the person who signed the application for the writ, or both, as the court shall direct.

RULE 103
Change of Name

SECTION 1. Venue. — A person desiring to change his name shall present the petition to the Court of First Instance of the province in which he resides, or, in the City of Manila, to the Juvenile and Domestic Relations Court.

SECTION 2. Contents of petition. — A petition for change of name shall be signed and verified by the person desiring his name changed, or some other person on his behalf, and shall set forth:

(a) That the petitioner has been a bona fide resident of the province where the petition is filed for at least three (3) years prior to the date of such filing;

(b) The cause for which the change of the petitioner's name is sought;

(c) The name asked for.

SECTION 3. Order for hearing. — If the petition filed is sufficient in form and substance, the court, by an order reciting the purpose of the petition, shall fix a date and place for the hearing thereof, and shall direct that a copy of the order be published before the hearing at least once a week for three (3) successive weeks in some newspaper of

general circulation published in the province, as the court shall deem best. The date set for the hearing shall not be within thirty (30) days prior to an election nor within four (4) months after the last publication of the notice.

SECTION 4. Hearing. — Any interested person may appear at the hearing and oppose the petition. The Solicitor General or the proper provincial or city fiscal shall appear on behalf of the Government of the Republic.

SECTION 5. Judgment. — Upon satisfactory proof in open court on the date fixed in the order that such order has been published as directed and that the allegations of the petition are true, the court shall, if proper and reasonable cause appears for changing the name of the petitioner, adjudge that such name be changed in accordance with the prayer of the petition.

SECTION 6. Service of judgment. — Judgments or orders rendered in connection with this rule shall be furnished the civil registrar of the municipality or city where the court issuing the same is situated, who shall forthwith enter the same in the civil register.

RULE 104
Voluntary Dissolution of Corporations

SECTION 1. Where, by whom and on what showing application made. — A petition for dissolution of a corporation shall be filed in the Court of First Instance of the province where the principal office of a corporation is situated. The petition shall be signed by a majority of its board of directors or other officers having the management of its affairs, verified by its president or secretary or one of its directors, and shall set forth all claims and demands against it, and that its dissolution was resolved upon by a majority of the members, or, if a stock corporation, by the affirmative vote of the stockholders holding and representing two-thirds of all shares of stock issued or subscribed, at a meeting of its members or stockholders called for that purpose.

SECTION 2. Order thereupon for filing objections. — If the petition is sufficient in form and substance, the court, by an order

reciting the purpose of the petition, shall fix a date on or before which objections thereto may be filed by any person, which date shall not be less than thirty (30) nor more than sixty (60) days after the entry of the order. Before such date a copy of the order shall be published at least once a week for four (4) successive weeks in some newspaper of general circulation published in the municipality or city where the principal office of the corporation is situated, or, if there be no such newspaper, then in some newspaper of general circulation in the Philippines, and a similar copy shall be posted for four (4) weeks in three public places in such municipality or city.

SECTION 3. Hearing, dissolution, and disposition of assets. Receiver. — Upon five (5) days' notice given after the date on which the right to file objections as fixed in the order expired, the court shall proceed to hear the petition and try any issue made by objections filed; and if no such objection is sufficient, and the material allegations of the petition are true, it shall render judgment dissolving the corporation and directing such disposition of its assets as justice requires, and may appoint a receiver to collect such assets and pay the debts of the corporation.

SECTION 4. What shall constitute record. — The petition, orders, proof of publication and posting, objections filed, declaration of dissolution, and any evidence taken, shall constitute the record in the case.

RULE 105
Judicial Approval of Voluntary Recognition of Minor Natural Children

SECTION 1. Venue. — Where judicial approval of a voluntary recognition of a minor natural child is required, such child or his parents shall obtain the same by filing a petition to that effect with the Court of First Instance of the province in which the child resides. In the City of Manila, the petition shall be filed in the Juvenile and Domestic Relations Court.

SECTION 2. Contents of petition. — The petition for judicial approval of a voluntary recognition of a minor natural child shall contain the following allegations:

(a) The jurisdictional facts;

(b) The names and residences of the parents who acknowledged the child, or of either of them, and their compulsory heirs, and the person or persons with whom the child lives;

(c) The fact that the recognition made by the parent or parents took place in a statement before a court of record or in an authentic writing, copy of the statement or writing being attached to the petition.

SECTION 3. Order for hearing. — Upon the filing of the petition, the court, by an order reciting the purpose of the same, shall fix the date and place for the hearing thereof, which date shall not be more than six (6) months after the entry of the order, and shall, moreover, cause a copy of the order to be served personally or by mail upon the interested parties, and published once a week for three (3) consecutive weeks, in a newspaper or newspapers of general circulation in the province.

SECTION 4. Opposition. — Any interested party must, within fifteen (15) days from service, or from the last date of publication, of the order referred to in the next preceding section, file his opposition to the petition, stating the grounds or reasons therefor.

SECTION 5. Judgment. — If, from the evidence presented during the hearing, the court is satisfied that the recognition of the minor natural child was willingly and voluntarily made by the parent or parents concerned, and that the recognition is for the best interest of the child, it shall render judgment granting judicial approval of such recognition.

SECTION 6. Service of judgment upon civil registrar. — A copy of the judgment rendered in accordance with the preceding section shall be served upon the civil registrar whose duty it shall be to enter the same in the register.

RULE 106
Constitution of Family Home

SECTION 1. Who may constitute. — The head of a family owning a house and the land on which it is situated may constitute the same into a family home by filing a verified petition to that effect with the Court of First Instance of the province or city were the property is located. In the City of Manila, the petition shall be filed in the Juvenile and Domestic Relations Court.

When there is danger that a person obliged to give support may lose his or her fortune because of grave mismanagement or on account of riotous living, his or her spouse, if any, and a majority of those entitled to be supported by him or by her may petition the Court of First Instance for the creation of the family home.

SECTION 2. Contents of petition. — The petition shall contain the following particulars:

(a) Description of the property;

(b) An estimate of its actual value;

(c) A statement that the petitioner is actually residing in the premises;

(d) The encumbrances thereon;

(e) The names and addresses of all the creditors of the petitioner or head of the family and of all mortgagees and other persons who have an interest in the property;

(f) The names of all the beneficiaries of the family home.

SECTION 3. Notice and publication. — The court shall notify the creditors, mortgagees and all other persons who have an interest in the estate, of the filing of the petition, causing copies thereof to be served upon them, and published once a week for three (3) consecutive weeks in a newspaper of general circulation. The petition shall, moreover, be caused to be posted in a conspicuous place in the parcel of land mentioned therein, and also in a conspicuous place of

the municipal building of the municipality or city in which the land is situated, for at least fourteen (14) days prior to the day of the hearing.

SECTION 4. Objection and date of hearing. — In the notice and publication required in the preceding section, the court shall require the interested parties to file their objection to the petition within a period of not less than thirty (30) days from receipt of notice or from the date of last publication, and shall fix the date and time of the hearing of the petition.

SECTION 5. Order. — After hearing, if the court finds that the actual value of the proposed family home does not exceed twenty thousand pesos, or thirty thousand pesos in chartered cities, and that no third person is prejudiced thereby, or that creditors have been given sufficient security for their credits, the petition shall be approved.

SECTION 6. Registration of order. — A certified copy of the order of the court approving the establishment of the family home shall be furnished the register of deeds who shall record the same in the registry of property.

RULE 107
Absentees

SECTION 1. Appointment of representative. — When a person disappears from his domicile, his whereabouts being unknown, and without having left an agent to administer his property, or the power conferred upon the agent has expired, any interested party, relative or friend, may petition the Court of First Instance of the place where the absentee resided before his disappearance for the appointment of a person to represent him provisionally in all that may be necessary. In the City of Manila, the petition shall be filed in the Juvenile and Domestic Relations Court.

SECTION 2. Declaration of absence; who may petition. — After the lapse of two (2) years from his disappearance and without any news about the absentee or since the receipt of the last news, or of five (5) years in case the absentee has left a person in charge of the administration of his property, the declaration of his absence and

appointment of a trustee or administrator may be applied for by any of the following:

(a) The spouse present;

(b) The heirs instituted in a will, who may present an authentic copy of the same;

(c) The relatives who would succeed by the law of intestacy; and

(d) Those who have over the property of the absentee some right subordinated to the condition of his death.

SECTION 3. Contents of petition. — The petition for the appointment of a representative, or for the declaration of absence and the appointment of a trustee or an administrator, must show the following:

(a) The jurisdictional facts;

(b) The names, ages, and residences of the heirs instituted in the will, copy of which shall be presented, and of the relatives who would succeed by the law of intestacy;

(c) The names and residences of creditors and others who may have any adverse interest over the property of the absentee;

(d) The probable value, location and character of the property belonging to the absentee.

SECTION 4. Time of hearing; notice and publication thereof . — When a petition for the appointment of a representative, or for the declaration of absence and the appointment of a trustee or administrator, is filed, the court shall fix a date and place for the hearing thereof where all concerned may appear to contest the petition.

Copies of the notice of the time and place fixed for the hearing shall be served upon the known heirs, legatees, devisees, creditors and other interested persons, at least ten (10) days before the day of the

hearing, and shall be published once a week for three (3) consecutive weeks prior to the time designated for the hearing, in a newspaper of general circulation in the province or city where the absentee resides, as the court shall deem best.

SECTION 5. Opposition. — Anyone appearing to contest the petition shall state in writing his grounds therefor, and served a copy thereof on the petitioner and other interested parties on or before the date designated for the hearing.

SECTION 6. Proof at hearing; order. — At the hearing, compliance with the provisions of section 4 of this rule must first be shown. Upon satisfactory proof of the allegations in the petition, the court shall issue an order granting the same and appointing the representative, trustee or administrator for the absentee. The judge shall take the necessary measures to safeguard the rights and interests of the absentee and shall specify the powers, obligations and remuneration of his representative, trustee or administrator, regulating them by the rules concerning guardians.

In case of declaration of absence, the same shall not take effect until six (6) months after its publication in a newspaper of general circulation designated by the court and in the Official Gazette.

SECTION 7. Who may be appointed. — In the appointment of a representative, the spouse present shall be preferred when there is no legal separation. If the absentee left no spouse, or if the spouse present is a minor or otherwise incompetent, any competent person may be appointed by the court.

In case of declaration of absence, the trustee or administrator of the absentee's property shall be appointed in accordance with the preceding paragraph.

SECTION 8. Termination of administration. — The trusteeship or administration of the property of the absentee shall cease upon order of the court in any of the following cases:

(a) When the absentee appears personally or by means of an agent;

(b) When the death of the absentee is proved and his testate or intestate heirs appear;

(c) When a third person appears, showing by a proper document that he has acquired the absentee's property by purchase or other title.

In these cases the trustee or administrator shall cease in the performance of his office, and the property shall be placed at the disposal of those who may have a right thereto.

RULE 108
Cancellation or Correction of Entries in the Civil Registry

SECTION 1. Who may file petition. — Any person interested in any act, event, order or decree concerning the civil status of persons which has been recorded in the civil register, may file a verified petition for the cancellation or correction of any entry relating thereto, with the Court of First Instance of the province where the corresponding civil registry is located.

SECTION 2. Entries subject to cancellation or correction. — Upon good and valid grounds, the following entries in the civil register may be cancelled or corrected: (a) births; (b) marriages; (c) deaths; (d) legal separations; (e) judgments of annulments of marriage; (f) judgments declaring marriages void from the beginning; (g) legitimations; (h) adoptions; (i) acknowledgments of natural children; (j) naturalization; (k) election, loss or recovery of citizenship; (l) civil interdiction; (m) judicial determination of filiation; (n) voluntary emancipation of a minor; and (a) changes of name.

SECTION 3. Parties. — When cancellation or correction of an entry in the civil register is sought, the civil registrar and all persons who have or claim any interest which would be affected thereby shall be made parties to the proceeding.

SECTION 4. Notice and publication. — Upon the filing of the petition, the court shall, by an order, fix the time and place for the hearing of the same, and cause reasonable notice thereof to be given

to the persons named in the petition. The court shall also cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.

SECTION 5. Opposition. — The civil registrar and any person having or claiming any interest under the entry whose cancellation or correction is sought may, within fifteen (15) days from notice of the petition, or from the last date of publication of such notice, file his opposition thereto.

SECTION 6. Expediting proceedings. — The court in which the proceeding is brought may make orders expediting the proceedings, and may also grant preliminary injunction for the preservation of the rights of the parties pending such proceedings.

SECTION 7. Order. — After hearing, the court may either dismiss the petition or issue an order granting the cancellation or correction prayed for. In either case, a certified copy of the judgment shall be served upon the civil registrar concerned who shall annotate the same in his record.

RULE 109
Appeals in Special Proceedings

SECTION 1. Orders or judgments from which appeals may be taken. — An interested person may appeal in special proceedings from an order or judgment rendered by a Court of First Instance or a Juvenile and Domestic Relations Court, where such order or judgment:

(a) Allows or disallows a will;

(b) Determines who are the lawful heirs of a deceased person, or the distributive share of the estate to which such person is entitled;

(c) Allows or disallows, in whole or in part, any claim against the estate of a deceased person, or any claim presented on behalf of the estate in offset to a claim against it;

(d) Settles the account of an executor, administrator, trustee or guardian;

(e) Constitutes, in proceedings relating to the settlement of the estate of a deceased person, or the administration of a trustee or guardian, a final determination in the lower court of the rights of the party appealing, except that no appeal shall be allowed from the appointment of a special administrator; and

(f) Is the final order or judgment rendered in the case, and affects the substantial rights of the person appealing, unless it be an order granting or denying a motion for a new trial or for reconsideration.

SECTION 2. Advance distribution in special proceedings. — Notwithstanding a pending controversy or appeal in proceedings to settle the estate of a decedent, the court may, in its discretion and upon such terms as it may deem proper and just, permit that such part of the estate as may not be affected by the controversy or appeal be distributed among the heirs or legatees, upon compliance with the conditions set forth in Rule 90 of these rules.

RULES ON CRIMINAL PROCEDURE

As amended by A.M. No. 00-5-03-SC, October 3, 2000

RULE 110
Prosecution of Offenses

SECTION 1. Institution of Criminal Actions. — Criminal actions shall be instituted as follows:

(a) For offenses where a preliminary investigation is required pursuant to section 1 of Rule 112, by filing the complaint with the proper officer for the purpose of conducting the requisite preliminary investigation.

(b) For all other offenses, by filing the complaint or information directly with the Municipal Trial Courts and Municipal Circuit Trial Courts, or the complaint with the office of the prosecutor. In Manila and other chartered cities, the complaint shall be filed with the office of the prosecutor unless otherwise provided in their charters.

The institution of the criminal action shall interrupt the running of the period of prescription of the offense charged unless otherwise provided in special laws. (1a)

SECTION 2. The Complaint or Information. — The complaint or information shall be in writing, in the name of the People of the Philippines and against all persons who appear to be responsible for the offense involved. (2a)

SECTION 3. Complaint Defined. — A complaint is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated. (3)

SECTION 4. Information Defined. — An information is an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court. (4a)

SECTION 5. Who Must Prosecute Criminal Actions. — All criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor. However, in Municipal Trial Courts or Municipal Circuit Trial Courts when the prosecutor assigned thereto or to the case is not available, the offended party, any peace officer, or public officer charged with the enforcement of the law violated may prosecute the case. This authority shall cease upon actual intervention of the prosecutor or upon elevation of the case to the Regional Trial Court.

The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse. The offended party cannot institute criminal prosecution without including the guilty parties, if both are alive, nor, in any case, if the offended party has consented to the offense or pardoned the offenders.

The offenses of seduction, abduction and acts of lasciviousness shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents or guardian, nor, in any case, if the offender has been expressly pardoned by any of them. If the offended party dies or becomes incapacitated before she can file the complaint,

and she has no known parents, grandparents or guardian, the State shall initiate the criminal action in her behalf.

The offended party, even if a minor, has the right to initiate the prosecution of the offenses of seduction, abduction and acts of lasciviousness independently of her parents, grandparents, or guardian, unless she is incompetent or incapable of doing so. Where the offended party, who is a minor, fails to file the complaint, her parents, grandparents, or guardian may file the same. The right to file the action granted to parents, grandparents, or guardian shall be exclusive of all other persons and shall be exercised successively in the order herein provided, except as stated in the preceding paragraph.

No criminal action for defamation which consists in the imputation of any of the offenses mentioned above shall be brought except at the instance of and upon complaint filed by the offended party. (5a)

The prosecution for violation of special laws shall be governed by the provisions thereof. (n)

SECTION 6. Sufficiency of Complaint or Information. — A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information. (6a)

SECTION 7. Name of the Accused. — The complaint or information must state the name and surname of the accused or any appellation or nickname by which he has been or is known. If his name cannot be ascertained, he must be described under a fictitious name with a statement that his true name is unknown.

If the true name of the accused is thereafter disclosed by him or appears in some other manner to the court, such true name shall be inserted in the complaint or information and record. (7a)

SECTION 8. Designation of the Offense. — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it. (8a)

SECTION 9. Cause of the Accusation. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment. (9a)

SECTION 10. Place of Commission of the Offense. — The complaint or information is sufficient if it can be understood from its allegations that the offense was committed or some of its essential ingredients occurred at some place within the jurisdiction of the court, unless the particular place where it was committed constitutes an essential element of the offense charged or is necessary for its identification. (10a)

SECTION 11. Date of Commission of the Offense. — It is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission. (11a)

SECTION 12. Name of the Offended Party. — The complaint or information must state the name and surname of the person against whom or against whose property the offense was committed, or any appellation or nickname by which such person has been or is known. If there is no better way of identifying him, he must be described under a fictitious name.

(a) In offenses against property, if the name of the offended party is unknown, the property must be described with such particularity as to properly identify the offense charged.

(b) If the true name of the person against whom or against whose property the offense was committed is thereafter disclosed or ascertained, the court must cause such true name to be inserted in the complaint or information and the record.

(c) If the offended party is a juridical person, it is sufficient to state its name, or any name or designation by which it is known or by which it may be identified, without need of averring that it is a juridical person or that it is organized in accordance with law. (12a)

SECTION 13. Duplicity of the Offense. — A complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses. (13a)

SECTION 14. Amendment or Substitution. — A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party. (n)

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with Section 19, Rule 119, provided the accused shall not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial. (14a)

SECTION 15. Place Where Action is to be Instituted. —

(a) Subject to existing laws, the criminal action shall be instituted and tried in the court of the municipality or territory where the offense was committed or where any of its essential ingredients occurred.

(b) Where an offense is committed in a train, aircraft, or other public or private vehicle in the course of its trip, the criminal action shall be instituted and tried in the court of any municipality or territory where such train, aircraft, or other vehicle passed during its trip, including the place of its departure and arrival.

(c) Where an offense is committed on board a vessel in the course of its voyage, the criminal action shall be instituted and tried in the court of the first port of entry or of any municipality or territory where the vessel passed during such voyage, subject to the generally accepted principles of international law.

(d) Crimes committed outside the Philippines but punishable under Article 2 of the Revised Penal Code shall be cognizable by the court where the criminal action is first filed. (15a)

SECTION 16. Intervention of the Offended Party in Criminal Action. — Where the civil action for recovery of civil liability is instituted in the criminal action pursuant to Rule 111, the offended party may intervene by counsel in the prosecution of the offense. (16a)

RULE 111
Prosecution of Civil Action

SECTION 1. Institution of Criminal and Civil Actions. — (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.

The reservation of the right to institute separately the civil action shall be made before the prosecution starts presenting its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.

When the offended party seeks to enforce civil liability against the accused by way of moral, nominal, temperate, or exemplary damages without specifying the amount thereof in the complaint or information, the filing fees therefor shall constitute a first lien on the judgment awarding such damages.

Where the amount of damages, other than actual, is specified in the complaint or information, the corresponding filing fees shall be paid by the offended party upon the filing thereof in court.

Except as otherwise provided in these Rules, no filing fees shall be required for actual damages.

No counterclaim, cross-claim or third-party complaint may be filed by the accused in the criminal case, but any cause of action which could have been the subject thereof may be litigated in a separate civil action. (1a)

(b) The criminal action for violation of Batas Pambansa Blg. 22 shall be deemed to include the corresponding civil action. No reservation to file such civil action separately shall be allowed.

Upon filing of the aforesaid joint criminal and civil actions, the offended party shall pay in full the filing fees based on the amount of the check involved, which shall be considered as the actual damages claimed. Where the complaint or information also seeks to recover liquidated, moral, nominal, temperate or exemplary damages, the offended party shall pay additional filing fees based on the amounts alleged therein. If the amounts are not so alleged but any of these damages are subsequently awarded by the court, the filing fees based on the amount awarded shall constitute a first lien on the judgment.

Where the civil action has been filed separately and trial thereof has not yet commenced, it may be consolidated with the criminal action upon application with the court trying the latter case. If the

application is granted, the trial of both actions shall proceed in accordance with section 2 of this Rule governing consolidation of the civil and criminal actions. (cir. 57-97)

SECTION 2. When Separate Civil Action is Suspended. — After the criminal action has been commenced, the separate civil action arising therefrom cannot be instituted until final judgment has been entered in the criminal action.

If the criminal action is filed after the said civil action has already been instituted, the latter shall be suspended in whatever stage it may be found before judgment on the merits. The suspension shall last until final judgment is rendered in the criminal action. Nevertheless, before judgment on the merits is rendered in the civil action, the same may, upon motion of the offended party, be consolidated with the criminal action in the court trying the criminal action. In case of consolidation, the evidence already adduced in the civil action shall be deemed automatically reproduced in the criminal action without prejudice to the right of the prosecution to cross-examine the witnesses presented by the offended party in the criminal case and of the parties to present additional evidence. The consolidated criminal and civil actions shall be tried and decided jointly.

During the pendency of the criminal action, the running of the period of prescription of the civil action which cannot be instituted separately or whose proceeding has been suspended shall be tolled. (n)

The extinction of the penal action does not carry with it extinction of the civil action. However, the civil action based on delict shall be deemed extinguished if there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist. (2a)

SECTION 3. When Civil Action May Proceed Independently. — In the cases provided in Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines, the independent civil action may be brought by the offended party. It shall proceed independently of the criminal action and shall require only a preponderance of evidence. In no case,

however, may the offended party recover damages twice for the same act or omission charged in the criminal action. (3a)

SECTION 4. Effect of Death on Civil Actions. — The death of the accused after arraignment and during the pendency of the criminal action shall extinguish the civil liability arising from the delict. However, the independent civil action instituted under section 3 of this Rule or which thereafter is instituted to enforce liability arising from other sources of obligation may be continued against the estate or legal representative of the accused after proper substitution or against said estate, as the case may be. The heirs of the accused may 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.

A final judgment entered in favor of the offended party shall be enforced in the manner especially provided in these rules for prosecuting claims against the estate of the deceased.

If the accused dies before arraignment, the case shall be dismissed without prejudice to any civil action the offended party may file against the estate of the deceased. (n)

SECTION 5. Judgment in Civil Action not a Bar. — A final judgment rendered in a civil action absolving the defendant from civil liability is not a bar to a criminal action against the defendant for the same act or omission subject of the civil action. (4a)

SECTION 6. Suspension by Reason of Prejudicial Question. — A petition for suspension of the criminal action based upon the pendency of a prejudicial question in a civil action may be filed in the office of the prosecutor or the court conducting the preliminary investigation. When the criminal action has been filed in court for trial, the petition to suspend shall be filed in the same criminal action at any time before the prosecution rests. (6a)

SECTION 7. Elements of Prejudicial Question. — The elements of a prejudicial question are: (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed. (5a)

RULE 112
Preliminary Investigation

SECTION 1. Preliminary Investigation Defined; When Required. — Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.

Except as provided in section 7 of this Rule, a preliminary, investigation is required to be conducted before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four (4) years, two (2) months and one (1) day without regard to the fine. (1a)

SECTION 2. Officers Authorized to Conduct Preliminary Investigations. —

The following may conduct preliminary investigations:

(a) Provincial or City Prosecutors and their assistants;

(b) Judges of the Municipal Trial Courts and Municipal Circuit Trial Courts;

(c) National and Regional State Prosecutors; and

(d) Other officers as may be authorized by law.

Their authority to conduct preliminary investigations shall include all crimes cognizable by the proper court in their respective territorial jurisdictions. (2a)

SECTION 3. Procedure. — The preliminary investigation shall be conducted in the following manner:

(a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or in their absence or unavailability, before a notary public, each of whom must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.

Objects as evidence need not be furnished a party but shall be made available for examination, copying, or photographing at the expense of the requesting party.

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

(d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.

(e) The investigating officer may set a hearing if there are facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned.

The hearing shall be held within ten (10) days from submission of the counter-affidavits and other documents or from the expiration of the period for their submission. It shall be terminated within five (5) days.

(f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial. (3a)

SECTION 4. Resolution of Investigating Prosecutor and its Review. — If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.

Within five (5) days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the Sandiganbayan in the exercise of its original jurisdiction. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.

No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.

Where the investigating prosecutor recommends the dismissal of the complaint but his recommendation is disapproved by the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy on the ground that a probable cause exists, the latter may, by himself, file the information against the respondent, or direct another assistant prosecutor or state prosecutor to do so without conducting another preliminary investigation.

If upon petition by a proper party under such rules as the Department of Justice may prescribe or motu proprio, the Secretary of Justice reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor, he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties. The same rule shall apply in preliminary investigations conducted by the officers of the Office of the Ombudsman. (4a)

SECTION 5. Resolution of Investigating Judge and its Review. — Within ten (10) days after the preliminary investigation, the investigating judge shall transmit the resolution of the case to the provincial or city prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the Sandiganbayan in the exercise of its original jurisdiction, for appropriate action. The resolution shall state the findings of facts and the law supporting his action, together with the record of the case which shall include: (a) the warrant, if the arrest is by virtue of a warrant; (b) the affidavits, counter-affidavits and other supporting evidence of the parties; (c) the undertaking or bail of the accused and the order for his release; (d) the transcripts of the proceedings during the preliminary investigation; and (e) the order of cancellation of his bail bond, if the resolution is for the dismissal of the complaint.

Within thirty (30) days from receipt of the records, the provincial or city prosecutor, or the Ombudsman or his deputy, as the case may be,

shall review the resolution of the investigating judge on the existence of probable cause. Their ruling shall expressly and clearly state the facts and the law on which it is based and the parties shall be furnished with copies thereof. They shall order the release of an accused who is detained if no probable cause is found against him. (5a)

SECTION 6. When Warrant of Arrest May Issue. — (a) By the Regional Trial Court. — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information.

(b) By the Municipal Trial Court. — When required pursuant to the second paragraph of section 1 of this Rule, the preliminary investigation of cases falling under the original jurisdiction of the Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, or Municipal Circuit Trial Court may be conducted by either the judge or the prosecutor. When conducted by the prosecutor the procedure for the issuance of a warrant of arrest by the judge shall be governed by paragraph (a) of this section. When the investigation is conducted by the judge himself, he shall follow the procedure provided in section 3 of this Rule. If his findings and recommendations are affirmed by the provincial or city prosecutor, or by the Ombudsman or his deputy, and the corresponding information is filed, he shall issue a warrant of arrest. However, without waiting for the conclusion of the investigation, the judge may issue a warrant of arrest if he finds after an examination in writing and under oath of the complainant and his witnesses in the form of searching questions and answers, that a probable cause exists and that there is a necessity

of placing the respondent under immediate custody in order not to frustrate the ends of justice.

(c) When Warrant of Arrest not Necessary. — A warrant of arrest shall not issue if the accused is already under detention pursuant to a warrant issued by the municipal trial court in accordance with paragraph (b) of this section, or if the complaint or information was filed pursuant to section 7 of this Rule or is for an offense penalized by fine only. The court shall then proceed in the exercise of its original jurisdiction. (6a)

SECTION 7. When Accused Lawfully Arrested Without Warrant. — When a person is lawfully arrested without a warrant involving an offense which requires a preliminary investigation, the complaint or information may be filed by a prosecutor without need of such investigation provided an inquest has been conducted in accordance with existing rules. In the absence or unavailability of an inquest prosecutor, the complaint may be filed by the offended party or a peace officer directly with the proper court on the basis of the affidavit of the offended party or arresting officer or person.

Before the complaint or information is filed, the person arrested may ask for a preliminary investigation in accordance with this Rule, but he must sign a waiver of the provisions of Article 125 of the Revised Penal Code, as amended, in the presence of his counsel. Notwithstanding the waiver, he may apply for bail and the investigation must be terminated within fifteen (15) days from its inception.

After the filing of the complaint or information in court without a preliminary investigation, the accused may, within five (5) days from the time he learns of its filing, ask for a preliminary investigation with the same right to adduce evidence in his defense as provided in this Rule. (7a; sec. 2, R.A. No. 7438)

SECTION 8. Records. — (a) Records supporting the information or complaint. An information or complaint filed in court shall be supported by the affidavits and counter-affidavits of the parties and their witnesses, together with the other supporting evidence and the resolution on the case.

(b) Record of preliminary investigation. — The record of the preliminary investigation, whether conducted by a judge or a prosecutor, shall not form part of the record of the case. However, the court, on its own initiative or on motion of any party, may order the production of the record or any of its part when necessary in the resolution of the case or any incident therein, or when it is to be introduced as an evidence in the case by the requesting party. (8a)

SECTION 9. Cases not Requiring a Preliminary Investigation nor Covered by the Rule on Summary Procedure. —

(a) If filed with the prosecutor. — If the complaint is filed directly with the prosecutor involving an offense punishable by imprisonment of less than four (4) years, two (2) months and one (1) day, the procedure outlined in section 3(a) of this Rule shall be observed. The prosecutor shall act on the complaint based on the affidavits and other supporting documents submitted by the complainant within ten (10) days from its filing.

(b) If filed with the Municipal Trial Court. — If the complaint or information is filed with the Municipal Trial Court or Municipal Circuit Trial Court for an offense covered by this section, the procedure in section 3(a) of this Rule shall be observed. If within ten (10) days after the filing of the complaint or information, the judge finds no probable cause after personally evaluating the evidence, or after personally examining in writing and under oath the complainant and his witnesses in the form of searching questions and answers, he shall dismiss the same. He may, however, require the submission of additional evidence, within ten (10) days from notice, to determine further the existence of probable cause. If the judge still finds no probable cause despite the additional evidence, he shall, within ten (10) days from its submission of expiration of said period, dismiss the case. When he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused had already been arrested, and hold him for trial. However, if the judge is satisfied that there is no necessity for placing the accused under custody, he may issue summons instead of a warrant of arrest. (9a)

Arrest

SECTION 1. Definition of Arrest. — Arrest is the taking of a person into custody in order that he may be bound to answer for the commission of an offense. (1)

SECTION 2. Arrest; How Made. — An arrest is made by an actual restraint of a person to be arrested, or by his submission to the custody of the person making the arrest.

No violence or unnecessary force shall be used in making an arrest. The person arrested shall not be subject to a greater restraint than is necessary for his detention. (2a)

SECTION 3. Duty of Arresting Officer. — It shall be the duty of the officer executing the warrant to arrest the accused and deliver him to the nearest police station or jail without unnecessary delay. (3a)

SECTION 4. Execution of Warrant. — The head of the office to whom the warrant of arrest was delivered for execution shall cause the warrant to be executed within ten (10) days from its receipt. Within ten (10) days after the expiration of the period, the officer to whom it was assigned for execution shall make a report to the judge who issued the warrant. In case of his failure to execute the warrant, he shall state the reasons therefor. (4a)

SECTION 5. Arrest Without Warrant; When Lawful. — A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112. (5a)

SECTION 6. Time of Making Arrest. — An arrest may be made on any day and at any time of the day or night. (6)

SECTION 7. Method of Arrest by Officer by Virtue of Warrant. — When making an arrest by virtue of a warrant, the officer shall inform the person to be arrested of the cause of the arrest and the fact that a warrant has been issued for his arrest, except when he flees or forcibly resists before the officer has opportunity to so inform him, or when the giving of such information will imperil the arrest. The officer need not have the warrant in his possession at the time of the arrest but after the arrest, if the person arrested so requires, the warrant shall be shown to him as soon as practicable. (7a)

SECTION 8. Method of Arrest by Officer Without Warrant. — When making an arrest without a warrant, the officer shall inform the person to be arrested of his authority and the cause of the arrest, unless the latter is either engaged in the commission of an offense, is pursued immediately after its commission, has escaped, flees, or forcibly resists before the officer has opportunity to so inform him, or when the giving of such information will imperil the arrest. (8a)

SECTION 9. Method of Arrest by Private Person. — When making an arrest, a private person shall inform the person to be arrested of the intention to arrest him and the cause of the arrest, unless the latter is either engaged in the commission of an offense, is pursued immediately after its commission, or has escaped, flees, or forcibly resists before the person making the arrest has opportunity to so inform him, or when the giving of such information will imperil the arrest. (9a)

SECTION 10. Officer May Summon Assistance. — An officer making a lawful arrest may orally summon as many persons as he deems necessary to assist him in effecting the arrest. Every person so

summoned by an officer shall assist him in effecting the arrest when he can render such assistance without detriment to himself. (10a)

SECTION 11. Right of Officer to Break into Building or Enclosure. — An officer, in order to make an arrest either by virtue of a warrant, or without a warrant as provided in section 5, may break into any building or enclosure where the person to be arrested is or is reasonably believed to be, if he is refused admittance thereto, after announcing his authority and purpose. (11a)

SECTION 12. Right to Break Out from Building or Enclosure. — Whenever an officer has entered the building or enclosure in accordance with the preceding section, he may break out therefrom when necessary to liberate himself. (12a)

SECTION 13. Arrest After Escape or Rescue. — If a person lawfully arrested escapes or is rescued, any person may immediately pursue or retake him without a warrant at any time and in any place within the Philippines. (13)

SECTION 14. Right of Attorney or Relative to Visit Person Arrested. — Any member of the Philippine Bar shall, at the request of the person arrested or of another acting in his behalf, have the right to visit and confer privately with such person in the jail or any other place of custody at any hour of the day or night. Subject to reasonable regulations, a relative of the person arrested can also exercise the same right. (14a)

RULE 114
Bail

SECTION 1. Bail Defined. — Bail is the security given for the release of a person in custody of the law, furnished by him or a bondsman, to guarantee his appearance before any court as required under the conditions hereinafter specified. Bail may be given in the form of corporate surety; property bond, cash deposit, or recognizance. (1a)

SECTION 2. Conditions of the Bail; Requirements. — All kinds of bail are subject to the following conditions:

(a) The undertaking shall be effective upon approval, and unless cancelled, shall remain in force at all stages of the case until promulgation of the judgment of the Regional Trial Court, irrespective of whether the case was originally filed in or appealed to it;

(b) The accused shall appear before the proper court whenever required by the court or these Rules;

(c) The failure of the accused to appear at the trial without justification and despite due notice shall be deemed a waiver of his right to be present thereat. In such case, the trial may proceed in absentia; and

(d) The bondsman shall surrender the accused to the court for execution of the final judgment.

The original papers shall state the full name and address of the accused, the amount of the undertaking and the conditions required by this section. Photographs (passport size) taken within the last six (6) months showing the face, left and right profiles of the accused must be attached to the bail. (2a)

SECTION 3. No Release or Transfer Except on Court Order or Bail. — No person under detention by legal process shall be released or transferred except upon order of the court or when he is admitted to bail. (3a)

SECTION 4. Bail, a Matter of Right; Exception. — All persons in custody shall be admitted to bail as a matter of right, with sufficient sureties, or released on recognizance as prescribed by law or this Rule (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, or Municipal Circuit Trial Court, and (b) before conviction by the Regional Trial Court of an offense not punishable by death, reclusion perpetua, or life imprisonment. (4a)

SECTION 5. Bail, When Discretionary. — Upon conviction by the Regional Trial Court of an offense not punishable by death, reclusion

perpetua, or life imprisonment, admission to bail is discretionary. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.

Should the court grant the application, the accused may be allowed to continue on provisional liberty during the pendency of the appeal under the same bail subject to the consent of the bondsman.

If the penalty imposed by the trial court is imprisonment exceeding six (6) years, the accused shall be denied bail, or his bail shall be cancelled upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

(a) That he is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;

(b) That he has previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without valid justification;

(c) That he committed the offense while under probation, parole, or conditional pardon;

(d) That the circumstances of his case indicate the probability of flight if released on bail; or

(e) That there is undue risk that he may commit another crime during the pendency of the appeal.

The appellate court may, motu proprio or on motion of any party, review the resolution of the Regional Trial Court after notice to the adverse party in either case. (5a)

SECTION 6. Capital Offense Defined. — A capital offense is an offense which, under the law existing at the time of its commission

and of the application for admission to bail, may be punished with death. (6a)

SECTION 7. Capital Offense or an Offense Punishable by Reclusion Perpetua or Life Imprisonment, not Bailable. — No person charged with a capital offense, or an offense punishable by reclusion perpetua or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution. (7a)

SECTION 8. Burden of Proof in Bail Application. — At the hearing of an application for bail filed by a person who is in custody for the commission of an offense punishable by death, reclusion perpetua, or life imprisonment, the prosecution has the burden of showing that evidence of guilt is strong. The evidence presented during the bail hearing shall be considered automatically reproduced at the trial but, upon motion of either party, the court may recall any witness for additional examination unless the latter is dead, outside the Philippines, or otherwise unable to testify. (8a)

SECTION 9. Amount of Bail; Guidelines. — The judge who issued the warrant or granted the application shall fix a reasonable amount of bail considering primarily, but not limited to, the following factors:

(a) Financial ability of the accused to give bail;

(b) Nature and circumstances of the offense;

(c) Penalty for the offense charged;

(d) Character and reputation of the accused;

(e) Age and health of the accused;

(f) Weight of the evidence against the accused;

(g) Probability of the accused appearing at the trial;

(h) Forfeiture of other bail;

(i) The fact that the accused was a fugitive from justice when arrested; and

(j) Pendency of other cases where the accused is on bail.

Excessive bail shall not be required. (9a)

SECTION 10. Corporate Surety. — Any domestic or foreign corporation, licensed as a surety in accordance with law and currently authorized to act as such, may provide bail by a bond subscribed jointly by the accused and an officer of the corporation duly authorized by its board of directors. (10a)

SECTION 11. Property Bond, How Posted. — A property bond is an undertaking constituted as lien on the real property given as security for the amount of the bail. Within ten (10) days after the approval of the bond, the accused shall cause the annotation of the lien on the certificate of title on file with the Registry of Deeds if the land is registered, or if unregistered, in the Registration Book on the space provided therefor, in the Registry of Deeds for the province or city where the land lies, and on the corresponding tax declaration in the office of the provincial, city and municipal assessor concerned.

Within the same period, the accused shall submit to the court his compliance and his failure to do so shall be sufficient cause for the cancellation of the property bond and his re-arrest and detention. (11a)

SECTION 12. Qualifications of Sureties in Property Bond. — The qualifications of sureties in a property bond shall be as follows:

(a) Each must be a resident owner of real estate within the Philippines;

(b) Where there is only one surety, his real estate must be worth at least the amount of the undertaking;

(c) If there are two or more sureties, each may justify in an amount less than that expressed in the undertaking but the aggregate of the

justified sums must be equivalent to the whole amount of the bail demanded.

In all cases, every surety must be worth the amount specified in his own undertaking over and above all just debts, obligations and properties exempt from execution. (12a)

SECTION 13. Justification of Sureties. — Every surety shall justify by affidavit taken before the judge that he possesses the qualifications prescribed in the preceding section. He shall describe the property given as security, stating the nature of his title, its encumbrances, the number and amount of other bails entered into by him and still undischarged, and his other liabilities. The court may examine the sureties upon oath concerning their sufficiency in such manner as it may deem proper. No bail shall be approved unless the surety is qualified. (13a)

SECTION 14. Deposit of Cash as Bail. — The accused or any person acting in his behalf may deposit in cash with the nearest collector of internal revenue or provincial, city, or municipal treasurer the amount of bail fixed by the court, or recommended by the prosecutor who investigated or filed the case. Upon submission of a proper certificate of deposit and a written undertaking showing compliance with the requirements of section 2 of this Rule, the accused shall be discharged from custody. The money deposited shall be considered as bail and applied to the payment of fine and costs while the excess, if any, shall be returned to the accused or to whoever made the deposit. (14a)

SECTION 15. Recognizance. — Whenever allowed by law or these Rules, the court may release a person in custody on his own recognizance or that of a responsible person. (15a)

SECTION 16. Bail, When not Required; Reduced Bail or Recognizance. — No bail shall be required when the law or these Rules so provide.

When a person has been in custody for a period equal to or more than the possible maximum imprisonment prescribed for the offense charged, he shall be released immediately, without prejudice to the

continuation of the trial or the proceedings on appeal. If the maximum penalty to which the accused may be sentenced is destierro, he shall be released after thirty (30) days of preventive imprisonment.

A person in custody for a period equal to or more than the minimum of the principal penalty prescribed for the offense charged, without application of the Indeterminate Sentence Law or any modifying circumstance, shall be released on a reduced bail or on his own recognizance, at the discretion of the court. (16a)

SECTION 17. Bail, Where Filed. — (a) Bail in the amount fixed may be filed with the court where the case is pending, or in the absence or unavailability of the judge thereof, with any regional trial judge, metropolitan trial judge, municipal trial judge, or municipal circuit trial judge in the province, city, or municipality. If the accused is arrested in a province, city, or municipality other than where the case is pending, bail may also be filed with any regional trial court of said place, or if no judge thereof is available, with any metropolitan trial judge, municipal trial judge, or municipal circuit trial judge therein.

(b) Where the grant of bail is a matter of discretion, or the accused seeks to be released on recognizance, the application may only be filed in the court where the case is pending, whether on preliminary investigation, trial, or appeal.

(c) Any person in custody who is not yet charged in court may apply for bail with any court in the province, city, or municipality where he is held. (17a)

SECTION 18. Notice of Application to Prosecutor. — In the application for bail under section 8 of this Rule, the court must give reasonable notice of the hearing to the prosecutor or require him to submit his recommendation. (18a)

SECTION 19. Release on Bail. — The accused must be discharged upon approval of the bail by the judge with whom it was filed in accordance with section 17 of this Rule.

When bail is filed with a court other than where the case is pending, the judge who accepted the bail shall forward it, together with the order of release and other supporting papers, to the court where the case is pending, which may, for good reason, require a different one to be filed. (19a)

SECTION 20. Increase or Reduction of Bail. — After the accused is admitted to bail, the court may, upon good cause, either increase or reduce its amount. When increased, the accused may be committed to custody if he does not give bail in the increased amount within a reasonable period. An accused held to answer a criminal charge, who is released without bail upon filing of the complaint or information, may, at any subsequent stage of the proceedings and whenever a strong showing of guilt appears to the court, be required to give bail in the amount fixed, or in lieu thereof, committed to custody. (20a)

SECTION 21. Forfeiture of Bail. — When the presence of the accused is required by the court or these Rules, his bondsmen shall be notified to produce him before the court on a given date and time. If the accused fails to appear in person as required, his bail shall be declared forfeited and the bondsmen given thirty (30) days within which to produce their principal and to show cause why no judgment should be rendered against them for the amount of their bail. Within the said period, the bondsmen must:

(a) produce the body of their principal or give the reason for his non-production; and

(b) explain why the accused did not appear before the court when first required to do so.

Failing in these two requisites, a judgment shall be rendered against the bondsmen, jointly and severally, for the amount of the bail. The court shall not reduce or otherwise mitigate the liability of the bondsmen, unless the accused has been surrendered or is acquitted. (21a)

SECTION 22. Cancellation of Bail. — Upon application of the bondsmen, with due notice to the prosecutor, the bail may be cancelled upon surrender of the accused or proof of his death.

The bail shall be deemed automatically cancelled upon acquittal of the accused, dismissal of the case, or execution of the judgment of conviction.

In all instances, the cancellation shall be without prejudice to any liability on the bail. (22a)

SECTION 23. Arrest of Accused Out on Bail. — For the purpose of surrendering the accused, the bondsmen may arrest him or, upon written authority endorsed on a certified copy of the undertaking, cause him to be arrested by a police officer or any other person of suitable age and discretion.

An accused released on bail may be re-arrested without the necessity of a warrant if he attempts to depart from the Philippines without permission of the court where the case is pending. (23a)

SECTION 24. No Bail After Final Judgment; Exception. — No bail shall be allowed after a judgment of conviction has become final. If before such finality, the accused applies for probation, he may be allowed temporary liberty under his bail. When no bail was filed or the accused is incapable of filing one, the court may allow his release on recognizance to the custody of a responsible member of the community. In no case shall bail be allowed after the accused has commenced to serve sentence. (24a)

SECTION 25. Court Supervision of Detainees. — The court shall exercise supervision over all persons in custody for the purpose of eliminating unnecessary detention. The executive judges of the Regional Trial Courts shall conduct monthly personal inspections of provincial, city, and municipal jails and the prisoners within their respective jurisdictions. They shall ascertain the number of detainees, inquire on their proper accommodations and health and examine the condition of the jail facilities. They shall order the segregation of sexes and of minors from adults, ensure the observance of the right of detainees to confer privately with counsel, and strive to eliminate conditions inimical to the detainees.

In cities and municipalities to be specified by the Supreme Court, the municipal trial judges or municipal circuit trial judges shall conduct monthly personal inspections of the municipal jails in their respective municipalities and submit a report to the executive judge of the Regional Trial Court having jurisdiction therein.

A monthly report of such visitation shall be submitted by the executive judges to the Court Administrator which shall state the total number of detainees, the names of those held for more than thirty (30) days, the duration of detention, the crime charged, the status of the case, the cause for detention, and other pertinent information. (25a)

SECTION 26. Bail not a Bar to Objections on Illegal Arrest, Lack of or Irregular Preliminary Investigation. — An application for or admission to bail shall not bar the accused from challenging the validity of his arrest or the legality of the warrant issued therefor, or from assailing the regularity or questioning the absence of a preliminary investigation of the charge against him, provided that he raises them before entering his plea. The court shall resolve the matter as early as practicable but not later than the start of the trial of the case. (n)

RULE 115
Rights of Accused

SECTION 1. Rights of Accused at the Trial. — In all criminal prosecutions, the accused shall be entitled to the following rights:

(a) To be presumed innocent until the contrary is proved beyond reasonable doubt.

(b) To be informed of the nature and cause of the accusation against him.

(c) To be present and defend in person and by counsel at every stage of the proceedings, from arraignment to promulgation of the judgment. The accused may, however, waive his presence at the trial pursuant to the stipulations set forth in his bail, unless his presence is specifically ordered by the court for purposes of identification. The

absence of the accused without justifiable cause at the trial of which he had notice shall be considered a waiver of his right to be present thereat. When an accused under custody escapes, he shall be deemed to have waived his right to be present on all subsequent trial dates until custody over him is regained. Upon motion, the accused may be allowed to defend himself in person when it sufficiently appears to the court that he can properly protect his rights without the assistance of counsel.

(d) To testify as a witness in his own behalf but subject to cross-examination on matters covered by direct examination. His silence shall not in any manner prejudice him.

(e) To be exempt from being compelled to be a witness against himself.

(f) To confront and cross-examine the witnesses against him at the trial. Either party may utilize as part of its evidence the testimony of a witness who is deceased, out of or can not with due diligence be found in the Philippines, unavailable, or otherwise unable to testify, given in another case or proceeding, judicial or administrative, involving the same parties and subject matter, the adverse party having the opportunity to cross-examine him.

(g) To have compulsory process issued to secure the attendance of witnesses and production of other evidence in his behalf.

(h) To have speedy, impartial and public trial.

(i) To appeal in all cases allowed and in the manner prescribed by law. (1a)

RULE 116
Arraignment and Plea

SECTION 1. Arraignment and Plea; How Made. —

(a) The accused must be arraigned before the court where the complaint or information was filed or assigned for trial. The arraignment shall be made in open court by the judge or clerk by furnishing the accused with a copy of the complaint or information, reading the same in the language or dialect known to him, and asking him whether he pleads guilty or not guilty. The prosecution may call at the trial witnesses other than those named in the complaint or information.

(b) The accused must be present at the arraignment and must personally enter his plea. Both arraignment and plea shall be made of record, but failure to do so shall not affect the validity of the proceedings.

(c) When the accused refuses to plead or makes a conditional plea, a plea of not guilty shall be entered for him. (1a)

(d) When the accused pleads guilty but presents exculpatory evidence, his plea shall be deemed withdrawn and a plea of not guilty shall be entered for him. (n)

(e) When the accused is under preventive detention, his case shall be raffled and its records transmitted to the judge to whom the case was raffled within three (3) days from the filing of the information or complaint. The accused shall be arraigned within ten (10) days from the date of the raffle. The pre-trial conference of his case shall be held within ten (10) days after arraignment. (n)

(f) The private offended party shall be required to appear at the arraignment for purposes of plea bargaining, determination of civil liability, and other matters requiring his presence. In case of failure of the offended party to appear despite due notice, the court may allow the accused to enter a plea of guilty to a lesser offense which is necessarily included in the offense charged with the conformity of the trial prosecutor alone. (cir. 1-89)

(g) Unless a shorter period is provided by special law or Supreme Court circular, the arraignment shall be held within thirty (30) days from the date the court acquires jurisdiction over the person of the accused. The time of the pendency of a motion to quash or for a bill of

particulars or other causes justifying suspension of the arraignment shall be excluded in computing the period. (sec. 2, cir. 38-98)

SECTION 2. Plea of Guilty to a Lesser Offense. — At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary. (sec. 4, circ. 38-98)

SECTION 3. Plea of Guilty to Capital Offense; Reception of Evidence. — When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and shall require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf. (3a)

SECTION 4. Plea of Guilty to Non-capital Offense; Reception of Evidence, Discretionary. — When the accused pleads guilty to a non-capital offense, the court may receive evidence from the parties to determine the penalty to be imposed. (4)

SECTION 5. Withdrawal of Improvident Plea of Guilty. — At any time before the judgment of conviction becomes final, the court may permit an improvident plea of guilty to be withdrawn and be substituted by a plea of not guilty. (5)

SECTION 6. Duty of Court to Inform Accused of his Right to Counsel. — Before arraignment, the court shall inform the accused of his right to counsel and ask him if he desires to have one. Unless the accused is allowed to defend himself in person or has employed counsel of his choice, the court must assign a counsel de oficio to defend him. (6a)

SECTION 7. Appointment of Counsel de Oficio. — The court, considering the gravity of the offense and the difficulty of the questions that may arise, shall appoint as counsel de oficio such members of the bar in good standing who, by reason of their

experience and ability, can competently defend the accused. But in localities where such members of the bar are not available, the court may appoint any person, resident of the province and of good repute for probity and ability, to defend the accused. (7a)

SECTION 8. Time for Counsel de Oficio to Prepare for Arraignment. — Whenever a counsel de oficio is appointed by the court to defend the accused at the arraignment, he shall be given a reasonable time to consult with the accused as to his plea before proceeding with the arraignment. (8)

SECTION 9. Bill of Particulars. — The accused may, before arraignment, move for a bill of particulars to enable him properly to plead and prepare for trial. The motion shall specify the alleged defects of the complaint or information and the details desired. (10a)

SECTION 10. Production or Inspection of Material Evidence in Possession of Prosecution. — Upon motion of the accused showing good cause and with notice to the parties, the court, in order to prevent surprise, suppression, or alteration, may order the prosecution to produce and permit the inspection and copying or photographing of any written statement given by the complainant and other witnesses in any investigation of the offense conducted by the prosecution or other investigating officers, as well as any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things not otherwise privileged, which constitute or contain evidence material to any matter involved in the case and which are in the possession or under the control of the prosecution, police, or other law investigating agencies. (11a)

SECTION 11. Suspension of Arraignment. — Upon motion by the proper party, the arraignment shall be suspended in the following cases:

(a) The accused appears to be suffering from an unsound mental condition which effectively renders him unable to fully understand the charge against him and to plead intelligently thereto. In such case, the court shall order his mental examination and, if necessary, his confinement for such purpose;

(b) There exists a prejudicial question; and

(c) A petition for review of the resolution of the prosecutor is pending at either the Department of Justice, or the Office of the President; provided, that the period of suspension shall not exceed sixty (60) days counted from the filing of the petition with the reviewing office. (12a)

RULE 117
Motion to Quash

SECTION 1. Time to Move to Quash. — At any time before entering his plea, the accused may move to quash the complaint or information. (1)

SECTION 2. Form and Contents. — The motion to quash shall be in writing, signed by the accused or his counsel and shall distinctly specify its factual and legal grounds. The court shall consider no ground other than those stated in the motion, except lack of jurisdiction over the offense charged. (2a)

SECTION 3. Grounds. — The accused may move to quash the complaint or information on any of the following grounds:

(a) That the facts charged do not constitute an offense;

(b) That the court trying the case has no jurisdiction over the offense charged;

(c) That the court trying the case has no jurisdiction over the person of the accused;

(d) That the officer who filed the information had no authority to do so;

(e) That it does not conform substantially to the prescribed form;

(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;

(g) That the criminal action or liability has been extinguished;

(h) That it contains averments which, if true, would constitute a legal excuse or justification; and

(i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent. (3a)

SECTION 4. Amendment of Complaint or Information. — If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made. (4a)

If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment. (n)

SECTION 5. Effect of Sustaining the Motion to Quash. — If the motion to quash is sustained, the court may order that another complaint or information be filed except as provided in section 6 of this rule. If the order is made, the accused, if in custody, shall not be discharged unless admitted to bail. If no order is made or if having been made, no new information is filed within the time specified in the order or within such further time as the court may allow for good cause, the accused, if in custody, shall be discharged unless he is also in custody for another charge. (5a)

SECTION 6. Order Sustaining the Motion to Quash not a Bar to Another Prosecution, Exception. — An order sustaining the motion to quash is not a bar to another prosecution for the same offense unless the motion was based on the grounds specified in section 3 (g) and (i) of this Rule. (6a)

SECTION 7. Former Conviction or Acquittal; Double Jeopardy. — When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express

consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

However, the conviction of the accused shall not be a bar to another prosecution for an offense which necessarily includes the offense charged in the former complaint or information under any of the following instances:

(a) the graver offense developed due to supervening facts arising from the same act or omission constituting the former charge;

(b) the facts constituting the graver charge became known or were discovered only after a plea was entered in the former complaint or information; or

(c) the plea of guilty to the lesser offense was made without the consent of the prosecutor and of the offended party except as provided in section 1(f) of Rule 116.

In any of the foregoing cases, where the accused satisfies or serves in whole or in part the judgment, he shall be credited with the same in the event of conviction for the graver offense. (7a)

SECTION 8. Provisional Dismissal. — A case shall not be provisionally dismissed except with the express consent of the accused and with notice to the offended party.

The provisional dismissal of offenses punishable by imprisonment not exceeding six (6) years or a fine of any amount, or both, shall become permanent one (1) year after issuance of the order without the case having been revived. With respect to offenses punishable by imprisonment of more than six (6) years, their provisional dismissal

shall become permanent two (2) years after issuance of the order without the case having been revived. (n)

SECTION 9. Failure to Move to Quash or to Allege Any Ground Therefor. — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections based on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule. (8)

RULE 118
Pre-Trial

SECTION 1. Pre-trial; Mandatory in Criminal Cases. — In all criminal cases cognizable by the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Court, the court shall, after arraignment and within thirty (30) days from the date the court acquires jurisdiction over the person of the accused, unless a shorter period is provided for in special laws or circulars of the Supreme Court, order a pre-trial conference to consider the following:

(a) plea bargaining;

(b) stipulation of facts;

(c) marking for identification of evidence of the parties;

(d) waiver of objections to admissibility of evidence;

(e) modification of the order of trial if the accused admits the charge but interposes a lawful defense; and

(f) such matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case. (secs. 2 and 3, cir. 38-98)

SECTION 2. Pre-trial Agreement. — All agreements or admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and counsel, otherwise,

they cannot be used against the accused. The agreements covering the matters referred to in section 1 of this Rule shall be approved by the court. (sec. 4, cir. 38-98)

SECTION 3. Non-appearance at Pre-trial Conference. — If the counsel for the accused or the prosecutor does not appear at the pre-trial conference and does not offer an acceptable excuse for his lack of cooperation, the court may impose proper sanctions or penalties. (sec. 5, cir. 38-98)

SECTION 4. Pre-trial Order. — After the pre-trial conference, the court shall issue an order reciting the actions taken, the facts stipulated, and evidence marked. Such order shall bind the parties, limit the trial to matters not disposed of, and control the course of the action during the trial, unless modified by the court to prevent manifest injustice. (3)

RULE 119
Trial

SECTION 1. Time to Prepare for Trial. — After a plea of not guilty is entered, the accused shall have at least fifteen (15) days to prepare for trial. The trial shall commence within thirty (30) days from receipt of the pre-trial order. (sec. 6, cir. 38-98)

SECTION 2. Continuous Trial Until Terminated; Postponements. — Trial once commenced shall continue from day to day as far as practicable until terminated. It may be postponed for a reasonable period of time for good cause. (2a)

The court shall, after consultation with the prosecutor and defense counsel, set the case for continuous trial on a weekly or other short-term trial calendar at the earliest possible time so as to ensure speedy trial. In no case shall the entire trial period exceed one hundred eighty (180) days from the first day of trial, except as otherwise authorized by the Supreme Court. (sec. 8, cir. 38-98).

The time limitations provided under this section and the preceding section shall not apply where special laws or circulars of the Supreme Court provide for a shorter period of trial. (n)

SECTION 3. Exclusions. — The following periods of delay shall be excluded in computing the time within which trial must commence:

(a) Any period of delay resulting from other proceedings concerning the accused, including but not limited to the following:

(1) Delay resulting from an examination of the physical and mental condition of the accused;

(2) Delay resulting from proceedings with respect to other criminal charges against the accused;

(3) Delay resulting from extraordinary remedies against interlocutory orders;

(4) Delay resulting from pre-trial proceedings; provided, that the delay does not exceed thirty (30) days;

(5) Delay resulting from orders of inhibition, or proceedings relating to change of venue of cases or transfer from other courts;

(6) Delay resulting from a finding of the existence of a prejudicial question; and

(7) Delay reasonably attributable to any period, not to exceed thirty (30) days, during which any proceeding concerning the accused is actually under advisement.

(b) Any period of delay resulting from the absence or unavailability of an essential witness.

For purposes of this subparagraph, an essential witness shall be considered absent when his whereabouts are unknown or his whereabouts cannot be determined by due diligence. He shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence.

(c) Any period of delay resulting from the mental incompetence or physical inability of the accused to stand trial.

(d) If the information is dismissed upon motion of the prosecution and thereafter a charge is filed against the accused for the same offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.

(e) A reasonable period of delay when the accused is joined for trial with a co-accused over whom the court has not acquired jurisdiction, or, as to whom the time for trial has not run and no motion for separate trial has been granted.

(f) Any period of delay resulting from a continuance granted by any court motu proprio, or on motion of either the accused or his counsel, or the prosecution, if the court granted the continuance on the basis of its findings set forth in the order that the ends of justice served by taking such action outweigh the best interest of the public and the accused in a speedy trial. (sec. 9, cir. 38-98)

SECTION 4. Factors for Granting Continuance. — The following factors, among others, shall be considered by a court in determining whether to grant a continuance under section 3(f) of this Rule.

(a) Whether or not the failure to grant a continuance in the proceeding would likely make a continuation of such proceeding impossible or result in a miscarriage of justice; and

(b) Whether or not the case taken as a whole is so novel, unusual and complex, due to the number of accused or the nature of the prosecution, or that it is unreasonable to expect adequate preparation within the periods of time established therein.

In addition, no continuance under section 3(f) of this Rule shall be granted because of congestion of the court's calendar or lack of diligent preparation or failure to obtain available witnesses on the part of the prosecutor. (sec. 10, cir. 38-98)

SECTION 5. Time Limit Following an Order for New Trial. — If the accused is to be tried again pursuant to an order for a new trial, the trial shall commence within thirty (30) days from notice of the order, provided that if the period becomes impractical due to unavailability of witnesses and other factors, the court may extend it but not to exceed one hundred eighty (180) days from notice of said order for a new trial. (sec. 11, cir. 38-98)

SECTION 6. Extended Time Limit. — Notwithstanding the provisions of section 1(g), Rule 116 and the preceding section 1, for the first twelve-calendar-month period following its effectivity on September 15, 1998, the time limit with respect to the period from arraignment to trial imposed by said provision shall be one hundred eighty (180) days. For the second twelve-month period, the time limit shall be one hundred twenty (120) days, and for the third twelve-month period, the time limit shall be eighty (80) days. (sec. 7, cir. 38-98)

SECTION 7. Public Attorney's Duties Where Accused is Imprisoned. — If the public attorney assigned to defend a person charged with a crime knows that the latter is preventively detained, either because he is charged with a bailable crime but has no means to post bail, or, is charged with a non-bailable crime, or, is serving a term of imprisonment in any penal institution, it shall be his duty to do the following:

(a) Shall promptly undertake to obtain the presence of the prisoner for trial or cause a notice to be served on the person having custody of the prisoner requiring such person to so advise the prisoner of his right to demand trial.

(b) Upon receipt of that notice, the custodian of the prisoner shall promptly advise the prisoner of the charge and of his right to demand trial. If at anytime thereafter the prisoner informs his custodian that he demands such trial, the latter shall cause notice to that effect to be sent promptly to the public attorney.

(c) Upon receipt of such notice, the public attorney shall promptly seek to obtain the presence of the prisoner for trial.

(d) When the custodian of the prisoner receives from the public attorney a properly supported request for the availability of the prisoner for purposes of trial, the prisoner shall be made available accordingly. (sec. 12, cir. 38-98)

SECTION 8. Sanctions. — In any case in which private counsel for the accused, the public attorney, or the prosecutor:

(a) Knowingly allows the case to be set for trial without disclosing that a necessary witness would be unavailable for trial;

(b) Files a motion solely for delay which he knows is totally frivolous and without merit;

(c) Makes a statement for the purpose of obtaining continuance which he knows to be false and which is material to the granting of a continuance; or

(d) Willfully fails to proceed to trial without justification consistent with the provisions hereof, the court may punish such counsel, attorney, or prosecutor, as follows:

(1) By imposing on a counsel privately retained in connection with the defense of an accused, a fine not exceeding twenty thousand pesos (P20,000.00);

(2) By imposing on any appointed counsel de oficio, public attorney, or prosecutor a fine not exceeding five thousand pesos (P5,000.00); and

(3) By denying any defense counsel or prosecutor the right to practice before the court trying the case for a period not exceeding thirty (30) days. The punishment provided for by this section shall be without prejudice to any appropriate criminal action or other sanction authorized under these rules. (sec. 13, cir. 38-98)

SECTION 9. Remedy Where Accused is not Brought to Trial Within the Time Limit. — If the accused is not brought to trial within the time limit required by Section 1(g), Rule 116 and Section 1, as extended by Section 6 of this rule, the information may be dismissed

on motion of the accused on the ground of denial of his right to speedy trial. The accused shall have the burden of proving the motion but the prosecution shall have the burden of going forward with the evidence to establish the exclusion of time under section 3 of this rule. The dismissal shall be subject to the rules on double jeopardy.

Failure of the accused to move for dismissal prior to trial shall constitute a waiver of the right to dismiss under this section. (sec. 14, cir. 38-98)

SECTION 10. Law on Speedy Trial not a Bar to Provision on Speedy Trial in the Constitution. — No provision of law on speedy trial and no rule implementing the same shall be interpreted as a bar to any charge of denial of the right to speedy trial guaranteed by section 14(2), article III, of the 1987 Constitution. (sec. 15, cir. 38-98)

SECTION 11. Order of Trial. — The trial shall proceed in the following order:

(a) The prosecution shall present evidence to prove the charge and, in the proper case, the civil liability.

b) The accused may present evidence to prove his defense and damages, if any, arising from the issuance of a provisional remedy in the case.

(c) The prosecution and the defense may, in that order, present rebuttal and sur-rebuttal evidence unless the court, in furtherance of justice, permits them to present additional evidence bearing upon the main issue.

(d) Upon admission of the evidence of the parties, the case shall be deemed submitted for decision unless the court directs them to argue orally or to submit written memoranda.

(e) When the accused admits the act or omission charged in the complaint or information but interposes a lawful defense, the order of trial may be modified. (3a)

SECTION 12. Application for Examination of Witness for Accused Before Trial. — When the accused has been held to answer for an offense, he may, upon motion with notice to the other parties, have witnesses conditionally examined in his behalf. The motion shall state: (a) the name and residence of the witness; (b) the substance of his testimony; and (c) that the witness is sick or infirm as to afford reasonable ground for believing that he will not be able to attend the trial, or resides more than one hundred (100) kilometers from the place of trial and has no means to attend the same, or that other similar circumstances exist that would make him unavailable or prevent him from attending the trial. The motion shall be supported by an affidavit of the accused and such other evidence as the court may require. (4a)

SECTION 13. Examination of Defense Witness; How Made. — If the court is satisfied that the examination of a witness for the accused is necessary, an order shall be made directing that the witness be examined at a specific date, time and place and that a copy of the order be served on the prosecutor at least three (3) days before the scheduled examination. The examination shall be taken before a judge, or, if not practicable, a member of the Bar in good standing so designated by the judge in the order, or if the order be made by a court of superior jurisdiction, before an inferior court to be designated therein. The examination shall proceed notwithstanding the absence of the prosecutor provided he was duly notified of the hearing. A written record of the testimony shall be taken. (5a)

SECTION 14. Bail to Secure Appearance of Material Witness. — When the court is satisfied, upon proof or oath, that a material witness will not testify when required, it may, upon motion of either party, order the witness to post bail in such sum as may be deemed proper. Upon refusal to post bail, the court shall commit him to prison until he complies or is legally discharged after his testimony has been taken. (6a)

SECTION 15. Examination of Witness for the Prosecution. — When it satisfactorily appears that a witness for the prosecution is too sick or infirm to appear at the trial as directed by the court, or has to leave the Philippines with no definite date of returning, he may forthwith be conditionally examined before the court where the case

is pending. Such examination, in the presence of the accused, or in his absence after reasonable notice to attend the examination has been served on him, shall be conducted in the same manner as an examination at the trial. Failure or refusal of the accused to attend the examination after notice shall be considered a waiver. The statement taken may be admitted in behalf of or against the accused. (7a)

SECTION 16. Trial of Several Accused. — When two or more accused are jointly charged with an offense, they shall be tried jointly unless the court, in its discretion and upon motion of the prosecutor or any accused, orders separate trial for one or more accused. (8a)

SECTION 17. Discharge of Accused to be State Witness. — When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when, after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:

(a) There is absolute necessity for the testimony of the accused whose discharge is requested;

(b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;

(c) The testimony of said accused can be substantially corroborated in its material points;

(d) Said accused does not appear to be the most guilty; and

(e) Said accused has not at any time been convicted of any offense involving, moral turpitude.

Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the motion for discharge of the accused as state witness, his sworn statement shall be inadmissible in evidence. (9a)

SECTION 18. Discharge of Accused Operates as Acquittal. — The order indicated in the preceding section shall amount to an acquittal of the discharged accused and shall be a bar to future prosecution for the same offense, unless the accused fails or refuses to testify against his co-accused in accordance with his sworn statement constituting the basis for his discharge. (10a)

SECTION 19. When Mistake has Been Made in Charging the Proper Offense. — When it becomes manifest at any time before judgment that a mistake has been made in charging the proper offense and the accused cannot be convicted of the offense charged or any other offense necessarily included therein, the accused shall not be discharged if there appears good cause to detain him. In such case, the court shall commit the accused to answer for the proper offense and dismiss the original case upon the filing of the proper information. (11a)

SECTION 20. Appointment of Acting Prosecutor. — When a prosecutor, his assistant or deputy is disqualified to act due to any of the grounds stated in section 1 of Rule 137 or for any other reason, the judge or the prosecutor shall communicate with the Secretary of Justice in order that the latter may appoint an acting prosecutor. (12a)

SECTION 21. Exclusion of the Public. — The judge may, motu proprio, exclude the public from the courtroom if the evidence to be produced during the trial is offensive to decency or public morals. He may also, on motion of the accused, exclude the public from the trial except court personnel and the counsel of the parties. (13a)

SECTION 22. Consolidation of Trials of Related Offenses. — Charges for offenses founded on the same facts or forming part of a series of offenses of similar character may be tried jointly at the discretion of the court. (14a)

SECTION 23. Demurrer to Evidence. — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the

prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution. (15a)

The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.

If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.

The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by certiorari before judgment. (n)

SECTION 24. Reopening. — At any time before finality of the judgment of conviction, the judge may, motu proprio or upon motion, with hearing in either case, reopen the proceedings to avoid a miscarriage of justice. The proceedings shall be terminated within thirty (30) days from the order granting it. (n)

RULE 120
Judgment

SECTION 1. Judgment; Definition and Form. — Judgment is the adjudication by the court that the accused is guilty or not guilty of the offense charged and the imposition on him of the proper penalty and civil liability, if any. It must be written in the official language, personally and directly prepared by the judge and signed by him and

shall contain clearly and distinctly a statement of the facts and the law upon which it is based. (1a)

SECTION 2. Contents of the Judgment. — If the judgment is of conviction, it shall state (1) the legal qualification of the offense constituted by the acts committed by the accused and the aggravating or mitigating circumstances which attended its commission; (2) the participation of the accused in the offense, whether as principal, accomplice, or accessory after the fact; (3) the penalty imposed upon the accused; and (4) the civil liability or damages caused by his wrongful act or omission to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate civil action has been reserved or waived.

In case the judgment is of acquittal, it shall state whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist. (2a)

SECTION 3. Judgment for Two or More Offenses. — When two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict him of as many offenses as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense. (3a)

SECTION 4. Judgment in Case of Variance Between Allegation and Proof . — When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved. (4a)

SECTION 5. When an Offense Includes or is Included in Another. — An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense

proved, when the essential ingredients of the former constitute or form part of those constituting the latter. (5a)

SECTION 6. Promulgation of Judgment. — The judgment is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense, the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court.

If the accused is confined or detained in another province or city, the judgment may be promulgated by the executive judge of the Regional Trial Court having jurisdiction over the place of confinement or detention upon request of the court which rendered the judgment. The court promulgating the judgment shall have authority to accept the notice of appeal and to approve the bail bond pending appeal; provided, that if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed and resolved by the appellate court.

The proper clerk of court shall give notice to the accused personally or through his bondsman or warden and counsel, requiring him to be present at the promulgation of the decision. If the accused was tried in absentia because he jumped bail or escaped from prison, the notice to him shall be served at his last known address.

In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation shall be made by recording the judgment in the criminal docket and serving him a copy thereof at his last known address or thru his counsel.

If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these rules against the judgment and the court shall order his arrest. Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his

absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice. (6a)

SECTION 7. Modification of Judgment. — A judgment of conviction may, upon motion of the accused, be modified or set aside before it becomes final or before appeal is perfected. Except where the death penalty is imposed, a judgment becomes final after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served, or when the accused has waived in writing his right to appeal, or has applied for probation. (7a)

SECTION 8. Entry of Judgment. — After a judgment has become final, it shall be entered in accordance with Rule 36. (8)

SECTION 9. Existing Provisions Governing Suspension of Sentence, Probation and Parole not Affected by this Rule. — Nothing in this Rule shall affect any existing provisions in the laws governing suspension of sentence, probation or parole. (9a)

RULE 121
New Trial or Reconsideration

SECTION 1. New Trial or Reconsideration. — At any time before a judgment of conviction becomes final, the court may, on motion of the accused or at its own instance but with the consent of the accused, grant a new trial or reconsideration. (1a)

SECTION 2. Grounds for a New Trial. — The court shall grant a new trial on any of the following grounds:

(a) That errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during the trial;

(b) That new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment. (2a)

SECTION 3. Ground for Reconsideration. — The court shall grant reconsideration on the ground of errors of law or fact in the judgment, which requires no further proceedings. (3a)

SECTION 4. Form of Motion and Notice to the Prosecutor. — The motion for new trial or reconsideration shall be in writing and shall state the grounds on which it is based. If based on a newly-discovered evidence, the motion must be supported by affidavits of witnesses by whom such evidence is expected to be given or by duly authenticated copies of documents which are proposed to be introduced in evidence. Notice of the motion for new trial or reconsideration shall be given to the prosecutor. (4a)

SECTION 5. Hearing on Motion. — Where a motion for new trial calls for resolution of any question of fact, the court may hear evidence thereon by affidavits or otherwise. (5a)

SECTION 6. Effects of Granting a New Trial or Reconsideration. — The effects of granting a new trial or reconsideration are the following:

(a) When a new trial is granted on the ground of errors of law or irregularities committed during the trial, all the proceedings and evidence affected thereby shall be set aside and taken anew. The court may, in the interest of justice, allow the introduction of additional evidence.

(b) When a new trial is granted on the ground of newly-discovered evidence, the evidence already adduced shall stand and the newly-discovered and such other evidence as the court may, in the interest of justice, allow to be introduced shall be taken and considered together with the evidence already in the record.

(c) In all cases, when the court grants new trial or reconsideration, the original judgment shall be set aside or vacated and a new judgment rendered accordingly. (6a)

RULE 122
Appeal

SECTION 1. Who May Appeal. — Any party may appeal from a judgment or final order, unless the accused will be placed in double jeopardy. (2a)

SECTION 2. Where to Appeal. — The appeal may be taken as follows:

(a) To the Regional Trial Court, in cases decided by Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, or Municipal Circuit Trial Court;

(b) To the Court of Appeals or to the Supreme Court in the proper cases provided by law, in cases decided by the Regional Trial Court; and

(c) To the Supreme Court, in cases decided by the Court of Appeals. (1a)

SECTION 3. How Appeal Taken. —

(a) The appeal to the Regional Trial Court, or 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 by serving a copy thereof upon the adverse party.

(b) 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 under Rule 42.

(c) The appeal to the Supreme Court in cases where the penalty imposed by the Regional Trial Court is death, reclusion perpetua, or life imprisonment, or where a lesser penalty is imposed but for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more serious offense for which the penalty of death, reclusion perpetua, or life imprisonment is imposed, shall be by filing a notice of appeal in accordance with paragraph (a) of this section.

(d) No notice of appeal is necessary in cases where the death penalty is imposed by the Regional Trial Court. The same shall be automatically reviewed by the Supreme Court as provided in section 10 of this Rule.

(e) Except as provided in the last paragraph of section 13, Rule 124, all other appeals to the Supreme Court shall be by petition for review on certiorari under Rule 45. (3a)

SECTION 4. Publication of Notice of Appeal. — If personal service of the copy of the notice of appeal can not be made upon the adverse party or his counsel, service may be done by registered mail or by substituted service pursuant to sections 7 and 8 of Rule 13. (4a)

SECTION 5. Waiver of Notice. — The appellee may waive his right to a notice that an appeal has been taken. The appellate court may, in its discretion, entertain an appeal notwithstanding failure to give such notice if the interests of justice so require. (5a)

SECTION 6. When Appeal to be Taken. — An appeal must be taken within fifteen (15) days from promulgation of the judgment or from notice of the final order appealed from. This period for perfecting an appeal shall be suspended from the time a motion for new trial or reconsideration is filed until notice of the order overruling the motion has been served upon the accused or his counsel at which time the balance of the period begins to run. (6a)

SECTION 7. Transcribing and Filing Notes of Stenographic Reporter Upon Appeal. — When notice of appeal is filed by the accused, the trial court shall direct the stenographic reporter to transcribe his notes of the proceedings. When filed by the People of the Philippines, the trial court shall direct the stenographic reporter to transcribe such portion of his notes of the proceedings as the court, upon motion, shall specify in writing. The stenographic reporter shall certify to the correctness of the notes and the transcript thereof, which shall consist of the original and four copies, and shall file said original and four copies with the clerk without unnecessary delay.

If death penalty is imposed, the stenographic reporter shall, within thirty (30) days from promulgation of the sentence, file with the clerk

the original and four copies of the duly certified transcript of his notes of the proceedings. No extension of time for filing of said transcript of stenographic notes shall be granted except by the Supreme Court and only upon justifiable grounds. (7a)

SECTION 8. Transmission of Papers to Appellate Court Upon Appeal. — Within five (5) days from the filing of the notice of appeal, the clerk of the court with whom the notice of appeal was filed must transmit to the clerk of court of the appellate court the complete record of the case, together with said notice. The original and three copies of the transcript of stenographic notes, together with the records, shall also be transmitted to the clerk of the appellate court without undue delay. The other copy of the transcript shall remain in the lower court. (8a)

SECTION 9. Appeal to the Regional Trial Courts. —

(a) Within five (5) days from perfection of the appeal, the clerk of court shall transmit the original record to the appropriate Regional Trial Court.

(b) Upon receipt of the complete record of the case, transcripts and exhibits, the clerk of court of the Regional Trial Court shall notify the parties of such fact.

(c) Within fifteen (15) days from receipt of said notice, the parties may submit memoranda or briefs, or may be required by the Regional Trial Court to do so. After the submission of such memoranda or briefs, or upon the expiration of the period to file the same, the Regional Trial Court shall decide the case on the basis of the entire record of the case and of such memoranda or briefs as may have been filed. (9a)

SECTION 10. Transmission of Records in Case of Death Penalty. — In all cases where the death penalty is imposed by the trial court, the records shall be forwarded to the Supreme Court for automatic review and judgment within five (5) days after the fifteenth (15) day following the promulgation of the judgment or notice of denial of a motion for new trial or reconsideration. The transcript shall also be

forwarded within ten (10) days after the filing thereof by the stenographic reporter. (10a)

SECTION 11. Effect of Appeal by Any of Several Accused.—

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

(b) The appeal of the offended party from the civil aspect shall not affect the criminal aspect of the judgment or order appealed from.

(c) Upon perfection of the appeal, the execution of the judgment or final order appealed from shall be stayed as to the appealing party. (11a)

SECTION 12. Withdrawal of Appeal. — Notwithstanding perfection of the appeal, the Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, or Municipal Circuit Trial Court, as the case may be, may allow the appellant to withdraw his appeal before the record has been forwarded by the clerk of court to the proper appellate court as provided in section 8, in which case the judgment shall become final. The Regional Trial Court may also, in its discretion, allow the appellant from the judgment of a Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, or Municipal Circuit Trial Court to withdraw his appeal, provided a motion to that effect is filed before rendition of the judgment in the case on appeal, in which case the judgment of the court of origin shall become final and the case shall be remanded to the latter court for execution of the judgment. (12a)

SECTION 13. Appointment of Counsel de Oficio for Accused on Appeal. — It shall be the duty of the clerk of court of the trial court, upon filing of a notice of appeal, to ascertain from the appellant, if confined in prison, whether he desires the Regional Trial Court, Court of Appeals or the Supreme Court to appoint a counsel de oficio to defend him and to transmit with the record on a form to be prepared by the clerk of court of the appellate court, a certificate of compliance

with this duty and of the response of the appellant to his inquiry. (13a)

RULE 123
Procedure in the Municipal Trial Courts

SECTION 1. Uniform Procedure. — The procedure to be observed in the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts shall be the same as in the Regional Trial Courts, except where a particular provision applies only to either of said courts and in criminal cases governed by the Revised Rule on Summary Procedure. (1a)

RULE 124
Procedure in the Court of Appeals

SECTION 1. Title of the Case. — In all criminal cases appealed to the Court of Appeals, the party appealing the case shall be called the "appellant" and the adverse party the "appellee," but the title of the case shall remain as it was in the court of origin. (1a)

SECTION 2. Appointment of Counsel de Oficio for the Accused. — If it appears from the record of the case as transmitted that (a) the accused is confined in prison, (b) is without counsel de parte on appeal, or (c) has signed the notice of appeal himself, the clerk of court of the Court of Appeals shall designate a counsel de oficio.

An appellant who is not confined in prison may, upon request, be assigned a counsel de oficio within ten (10) days from receipt of the notice to file brief and he establishes his right thereto. (2a)

SECTION 3. When Brief for Appellant to be Filed. — Within thirty (30) days from receipt by the appellant or his counsel of the notice from the clerk of court of the Court of Appeals that the evidence, oral and documentary, is already attached to the record, the appellant shall file seven (7) copies of his brief with the clerk of court which shall be accompanied by proof of service of two (2) copies thereof upon the appellee. (3a)

SECTION 4. When Brief for Appellee to be Filed; Reply Brief of the Appellant. — Within thirty (30) days from receipt of the brief of the appellant, the appellee shall file seven (7) copies of the brief of the appellee with the clerk of court which shall be accompanied by proof of service of two (2) copies thereof upon the appellant.

Within twenty (20) days from receipt of the brief of the appellee, the appellant, may file a reply brief traversing matters raised in the former but not covered in the brief of the appellant. (4a)

SECTION 5. 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. (5a)

SECTION 6. Form of Briefs. — Briefs shall either be printed, encoded or typewritten in double space on legal size, good quality unglazed paper, 330 mm. in length by 216 mm. in width. (6a)

SECTION 7. Contents of Brief . — The briefs in criminal cases shall have the same contents as provided in sections 13 and 14 of Rule 44. A certified true copy of the decision or final order appealed from shall be appended to the brief of the appellant. (7a)

SECTION 8. Dismissal of Appeal for Abandonment or Failure to Prosecute. — The Court of Appeals may, upon motion of the appellee or motu proprio and with notice to the appellant in either case, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, except where the appellant is represented by a counsel de oficio.

The Court of Appeals may also, upon motion of the appellee or motu proprio, dismiss the appeal if the appellant escapes from prison or confinement, jumps bail or flees to a foreign country during the pendency of the appeal. (8a)

SECTION 9. Prompt Disposition of Appeals. — Appeals of accused who are under detention shall be given precedence in their disposition over other appeals. The Court of Appeals shall hear and decide the appeal at the earliest practicable time with due regard to

the rights of the parties. The accused need not be present in court during the hearing of the appeal. (9a)

SECTION 10. Judgment not to be Reversed or Modified Except for Substantial Error. — No judgment shall be reversed or modified unless the Court of Appeals, after an examination of the record and of the evidence adduced by the parties, is of the opinion that error was committed which injuriously affected the substantial rights of the appellant. (10a)

SECTION 11. Scope of Judgment. — The Court of Appeals may reverse, affirm, or modify the judgment and increase or reduce the penalty imposed by the trial court, remand the case to the Regional Trial Court for new trial or retrial, or dismiss the case. (11a)

SECTION 12. Power to Receive Evidence. — The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases (a) falling within its original jurisdiction, (b) involving claims for damages arising from provisional remedies, or (c) where the court grants a new trial based only on the ground of newly-discovered evidence. (12a)

SECTION 13. Quorum of the Court; Certification or Appeal of Cases to Supreme Court. — Three (3) Justices of the Court of Appeals shall constitute a quorum for the sessions of a division. The unanimous vote of the three (3) Justices 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 a member of the division. In the event that the three (3) Justices can not reach a unanimous vote, the Presiding Justice shall direct the raffle committee of the Court to designate two (2) additional Justices to sit temporarily with them, forming a special division of five (5) members and the concurrence of a majority of such division shall be necessary for the pronouncement of a judgment or final resolution. The designation of such additional Justices shall be made strictly by raffle and rotation among all other Justices of the Court of Appeals.

Whenever the Court of Appeals finds that the penalty of death, reclusion perpetua, or life imprisonment should be imposed in a case, the court, after discussion of the evidence and the law involved, shall render judgment imposing the penalty of death, reclusion perpetua, or life imprisonment as the circumstances warrant. However, it shall refrain from entering the judgment and forthwith certify the case and elevate the entire record thereof to the Supreme Court for review. (13a)

SECTION 14. Motion for New Trial. — At any time after the appeal from the lower court has been perfected and before the judgment of the Court of Appeals convicting the appellant becomes final, the latter may move for a new trial on the ground of newly-discovered evidence material to his defense. The motion shall conform with the provisions of section 4, Rule 121. (14a)

SECTION 15. Where New Trial Conducted. — When a new trial is granted, the Court of Appeals may conduct the hearing and receive evidence as provided in section 12 of this Rule or refer the trial to the court of origin. (15a)

SECTION 16. Reconsideration. — A motion for reconsideration shall be filed within fifteen (15) days from notice of the decision or final order of the Court of Appeals, with copies thereof served upon the adverse party, setting forth the grounds in support thereof. The mittimus shall be stayed during the pendency of the motion for reconsideration. No party shall be allowed a second motion for reconsideration of a judgment or final order. (16a)

SECTION 17. Judgment Transmitted and Filed in Trial Court. — When the entry of judgment of the Court of Appeals is issued, a certified true copy of the judgment shall be attached to the original record which shall be remanded to the clerk of the court from which the appeal was taken. (17a)

SECTION 18. Application of Certain Rules in Civil Procedure to Criminal Cases. — The provisions of Rules 42, 44 to 46 and 48 to 56 relating to procedure in the Court of Appeals and in the Supreme Court in original and appealed civil cases shall be applied to criminal

cases insofar as they are applicable and not inconsistent with the provisions of this Rule. (18a)

RULE 125
Procedure in the Supreme Court

SECTION 1. Uniform Procedure. — Unless otherwise provided by the Constitution or by law, the procedure in the Supreme Court in original and in appealed cases shall be the same as in the Court of Appeals. (1a)

SECTION 2. Review of Decisions of the Court of Appeals. — The procedure for the review by the Supreme Court of decisions in criminal cases rendered by the Court of Appeals shall be the same as in civil cases. (2a)

SECTION 3. Decision if Opinion is Equally Divided. — When the Supreme Court en banc is equally divided in opinion or the necessary majority cannot be had on whether to acquit the appellant, the case shall again be deliberated upon and if no decision is reached after re-deliberation, the judgment of conviction of the lower court shall be reversed and the accused acquitted. (3a)

RULE 126
Search and Seizure

SECTION 1. Search Warrant Defined. — A search warrant is an order in writing issued in the name of the People of the Philippines, signed by a judge and directed to a peace officer, commanding him to search for personal property described therein and bring it before the court. (1)

SECTION 2. Court Where Application for Search Warrant Shall be Filed. — An application for search warrant shall be filed with the following:

a) Any court within whose territorial jurisdiction a crime was committed.

b) For compelling reasons stated in the application, any court within the judicial region where the crime was committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced.

However, if the criminal action has already been filed, the application shall only be made in the court where the criminal action is pending. (n)

SECTION 3. Personal Property to be Seized. — A search warrant may be issued for the search and seizure of personal property:

(a) Subject of the offense;

(b) Stolen or embezzled and other proceeds, or fruits of the offense; or

(c) Used or intended to be used as the means of committing an offense. (2a)

SECTION 4. Requisites for Issuing Search Warrant. — A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be search and the things to be seized which may be anywhere in the Philippines. (3a)

SECTION 5. Examination of Complainant; Record. — The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted. (4a)

SECTION 6. Issuance and Form of Search Warrant. — If the judge is satisfied of the existence of facts upon which the application is based or that there is probable cause to believe that they exist, he shall issue the warrant, which must be substantially in the form prescribed by these Rules. (5a)

SECTION 7. Right to Break Door or Window to Effect Search. — The officer, if refused admittance to the place of directed search after giving notice of his purpose and authority, may break open any outer or inner door or window of a house or any part of a house or anything therein to execute the warrant or liberate himself or any person lawfully aiding him when unlawfully detained therein. (6)

SECTION 8. Search of House, Room, or Premises to be Made in Presence of Two Witnesses. — No search of a house, room, or any other premises shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality. (7a)

SECTION 9. Time of Making Search. — The warrant must direct that it be served in the day time, unless the affidavit asserts that the property is on the person or in the place ordered to be searched, in which case a direction may be inserted that it be served at any time of the day or night. (8a)

SECTION 10. Validity of Search Warrant. — A search warrant shall be valid for ten (10) days from its date. Thereafter, it shall be void. (9)

SECTION 11. Receipt for the Property Seized. — The officer seizing property under the warrant must give a detailed receipt for the same to the lawful occupant of the premises in whose presence the search and seizure were made, or in the absence of such occupant, must, in the presence of at least two witnesses of sufficient age and discretion residing in the same locality, leave a receipt in the place in which he found the seized property. (10a)

SECTION 12. Delivery of Property and Inventory Thereof to Court; Return and Proceedings Thereon. — (a) The officer must forthwith deliver the property seized to the judge who issued the warrant, together with a true inventory thereof duly verified under oath. AEDISC

(b) Ten (10) days after issuance of the search warrant, the issuing judge shall ascertain if the return has been made, and if none, shall summon the person to whom the warrant was issued and require him to explain why no return was made. If the return has been made, the judge shall ascertain whether section 11 of this Rule has been complied with and shall require that the property seized be delivered to him. The judge shall see to it that subsection (a) hereof has been complied with.

(c) The return on the search warrant shall be filed and kept by the custodian of the log book on search warrants who shall enter therein the date of the return, the result, and other actions of the judge.

A violation of this section shall constitute contempt of court. (11 a)

SECTION 13. Search Incident to Lawful Arrest. — A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant. (12a)

SECTION 14. Motion to Quash a Search Warrant or to Suppress Evidence; Where to File. — A motion to quash a search warrant and/or to suppress evidence obtained thereby may be filed in and acted upon only by the court where the action has been instituted. If no criminal action has been instituted, the motion may be filed in and resolved by the court that issued the search warrant. However, if such court failed to resolve the motion and a criminal case is subsequently filed in another court, the motion shall be resolved by the latter court. (n)

RULE 127
Provisional Remedies in Criminal Cases

SECTION 1. Availability of Provisional Remedies. — The provisional remedies in civil actions, insofar as they are applicable, may be availed of in connection with the civil action deemed instituted with the criminal action. (1a)

SECTION 2. Attachment. — When the civil action is properly instituted in the criminal action as provided in Rule 111, the offended

party may have the property of the accused attached as security for the satisfaction of any judgment that may be recovered from the accused in the following cases:

(a) When the accused is about to abscond from the Philippines;

(b) When the criminal action is based on a claim for money or property embezzled or fraudulently misapplied or converted to the use of the accused who is a public officer, officer of a corporation, 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) When the accused has concealed, removed, or disposed of his property, or is about to do so; and

(d) When the accused resides outside the Philippines. (2a)

PART IV
REVISED RULES ON EVIDENCE

RULE 128
GENERAL PROVISIONS

SECTION 1. Evidence defined. — Evidence is the means, sanctioned by these rules, of ascertaining in a judicial proceeding the truth respecting a matter of fact. (1)

SECTION 2. Scope. — The rules of evidence shall be the same in all courts and in all trials and hearings, except as otherwise provided by law or these rules. (2a)

SECTION 3. Admissibility of evidence. — Evidence is admissible when it is relevant to the issue and is not excluded by the law or these rules. (3a)

SECTION 4. Relevancy; collateral matters. — Evidence must have such a relation to the fact in issue as to induce belief in its existence or non-existence. Evidence on collateral matters shall not

be allowed, except when it tends in any reasonable degree to establish the probability or improbability of the fact in issue. (4a)

RULE 129
WHAT NEED NOT BE PROVED

SECTION 1. Judicial notice, when mandatory. — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions. (1a)

SECTION 2. Judicial notice, when discretionary. — A court may. take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions. (1a)

SECTION 3. Judicial notice, when hearing necessary. — During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.

After the trial, and before judgment or on appeal, the proper court, on its own initiative or on request of a party, may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case.(n)

SECTION 4. Judicial admissions. — An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. (2a)

RULE 130
RULES OF ADMISSIBILITY

A. OBJECT (REAL) EVIDENCE

SECTION 1. Object as evidence. — Objects as evidence are those addressed to the senses of the court. When an object is relevant to the fact in issue, it may be exhibited to, examined or viewed by the court. (1a)

B. DOCUMENTARY EVIDENCE

SECTION 2. Documentary evidence. — Documents as evidence consist of writings or any material containing letters. words, numbers, figures, symbols or other modes of written expressions offered as proof of their contents. (n)

1. BEST EVIDENCE RULE

SECTION 3. Original document must be produced, exceptions. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office. (2a)

SECTION 4. Original of document. —

(a) The original of a document is one the contents of which are the subject of inquiry.

(b) When a document is in two or more copies executed at or about the same time, with identical contents, all such copies are equally regarded as originals.

(c) When an entry is repeated in the regular course of business, one being copied from another at or near the time of the transaction, all the entries are likewise equally regarded as originals. (3a)

2. SECONDARY EVIDENCE

SECTION 5. When original document is unavailable. — When the original document has been lost or destroyed, or cannot be produced in court, the offer or, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated. (4a)

SECTION 6. When original document is in adverse party's custody or control. — If the document is in the custody or under the control of the adverse party, he must have reasonable notice to produce it. If after such notice and after satisfactory proof of its existence, he fails to produce the document, secondary evidence may be presented as in the case of its loss. (5a)

SECTION 7. Evidence admissible when original document is a public record. — When the original of a document is in the custody of a public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof. (2a)

SECTION 8. Party who calls for document not, bound to offer it. — A party who calls for the production of a document and inspects the same is not obliged to offer it as evidence. (6a)

3. PAROL EVIDENCE RULE

SECTION 9. Evidence of written agreements. — When the terms of an, agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:

(a) An intrinsic ambiguity, mistake or imperfection in the written agreement;

(b) The failure of the written agreement to express the true intent and agreement of the parties thereto;

(c) The validity of the written agreement; or

(d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The terms “agreement” includes wills. (7a)

4. INTERPRETATION OF DOCUMENTS

SECTION 10. Interpretation of a writing according to its legal meaning. — The language of a writing is to be interpreted according to the legal meaning it bears in the place of its execution, unless the parties intended otherwise. (8)

SECTION 11. Instrument construed so as to give effect to all provisions. — In the construction of an instrument where there are several provisions or particulars. such a construction is, if possible, to be adopted as will give effect to all. (9)

SECTION 12. Interpretation according to intention; general and particular provisions. — In the construction of an instrument, the intention of the parties is to be pursued; and when a general and a

particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it. (10)

SECTION 13. Interpretation according to circumstances. — For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject thereof and of the parties to it, may be shown, so that the judge may be placed in the position of those whose language he is to interpret. (11)

SECTION 14. Peculiar signification of terms. — The terms of a writing are presumed to have been used in their primary and general acceptation, but evidence is admissible to show that they have a local, technical, or otherwise peculiar signification, and were so used and understood in the particular instance, in which case the agreement must be construed accordingly.(12)

SECTION 15. Written words control printed. — When an instrument consists partly of written words and partly of a printed form, and the two are inconsistent, the former controls the latter. (13)

SECTION 16. Experts and interpreters to be used in explaining certain writings. — When the characters in which an instrument is written are difficult to be deciphered, or the language is not understood by the court, the evidence of persons skilled in deciphering the characters, or who understand the language, is admissible to declare the characters or the meaning of the language. (14)

SECTION 17. Of two constructions, which preferred. — When the terms of an agreement have been intended in a different sense by the different parties to it, that sense is to prevail against either party in which he supposed the other understood it, and when different constructions of a provision are otherwise equally proper, that is to be taken which is the most favorable to the party in whose favor the provision was made. (15)

SECTION 18. Construction in favor of natural right. — When an instrument is equally susceptible of two interpretations, one is favor

of natural right and the other against it, the former is to be adopted. (16)

SECTION 19. Interpretation according to usage. — An instrument may be construed according to usage, in order to determine its true character. (17)

C. TESTIMONIAL EVIDENCE

1. QUALIFICATION OF WITNESSES

SECTION 20. Witnesses; their qualifications. — Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses.

Religious or political belief, interest in the outcome of the case, or conviction of a crime unless otherwise provided by law, shall not be a ground for disqualification. (18 a)

SECTION 21. Disqualification by reason of mental incapacity or immaturity. — The following persons cannot be witnesses:

(a) Those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others;

(b) Children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully. (19a)

SECTION 22. Disqualification by reason of marriage. — During their marriage, neither the husband nor the wife may testify for or against the other without the consent of the affected spouse, except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants. (20a)

SECTION 23. Disqualification by reason of death or insanity of adverse party. — Parties or assignors of parties to a case, or persons

in whose behalf a case is prosecuted, against an executor or administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the estate of such deceased person or against such person of unsound mind, cannot testify as to any matter of fact occurring before the death of such deceased person or before such person became of unsound mind. (20a)

SECTION 24. Disqualification by reason of privileged communication. — The following persons cannot testify as to matters learned in confidence in the following cases:

(a) The husband or the wife, during or after the marriage, cannot be examined without the consent of the other as to any communication received in confidence by one from the other during the marriage except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants;

(b) An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of, or with a view to, professional employment, nor can an attorney's secretary, stenographer, or clerk be examined, without the consent of the client and his employer, concerning any fact the knowledge of which has been acquired in such capacity;

(c) A person authorized to practice medicine, surgery or obstetrics cannot in a civil case, without the consent of the patient, be examined as to any advice or treatment given by him or any information which he may have acquired in attending such patient in a professional capacity, which information was necessary to enable him to act in that capacity, and which would blacken the reputation of the patient;

(d) A minister or priest cannot, without the consent of the person making the confession, be examined as to any confession made to or any advice given by him in his professional character in the course of discipline enjoined by the church to which the minister or priest belongs;

(e) A public officer cannot be examined during his term of office or after wards, as to communications made to him in official confidence, when the court finds that the public interest would suffer by the disclosure. (21a)

2. TESTIMONIAL PRIVILEGE

SECTION 25. Parental and filial privilege. — No person may be compelled to testify against his parents, other direct ascendants, children or other direct descendants. (20a)

3. ADMISSIONS AND CONFESSIONS

SECTION 26. Admissions of a party. — The act, declaration or omission of a party as to a relevant fact may be given in evidence against him. (22)

SECTION 27. Offer of compromise not admissible. — In civil cases, an offer of compromise is not an admission of any liability, and is not admissible in evidence against the offer or. In criminal cases, except those involving quasi-offenses (criminal negligence) or those allowed by law to be compromised, an offer of compromise by the accused may be received in evidence as an implied admission of guilt.

A plea of guilty later withdrawn, or an unaccepted offer of a plea of guilty to a lesser offense, is not admissible in evidence against the accused who made the plea or offer.

An offer to pay or the payment of medical, hospital or other expenses occasioned by an injury is not admissible in evidence as proof of civil or criminal liability for the injury. (24a)

SECTION 28. Admission by third party. — The rights of a party cannot be prejudiced by an act, declaration, or omission of another, except as hereinafter provided. (25a)

SECTION 29. Admission by co-partner or agent. — The act or declaration of a partner or agent of the party within the scope of his authority and during the existence of the partnership or agency, may be given in evidence against such party after the partnership or

agency is shown by evidence other than such act or declaration. The same rule applies to the act or declaration of a joint owner, joint debtor, or other person jointly interested with the party. (26a)

SECTION 30. Admission by conspirator. — The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act of declaration. (27)

SECTION 31. Admission by privies. — Where one derives title to property from another, the act, declaration, or omission of the latter, while holding the title, in relation to the property, is evidence against the former. (21)

SECTION 32. Admission by silence. — An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him to do so, may be given in evidence against him. (23a)

SECTION 33. Confession. — The declaration of an accused acknowledging his guilt of the offense charged, or of any offense necessarily included therein, may be given in evidence against him. (29a)

4. PREVIOUS CONDUCT AS EVIDENCE

SECTION 34. Similar acts as evidence. — Evidence that one did or did not do a certain thing at one time is not admissible to prove that he did or did not do the same or a similar thing at another time; but it may be received to prove a specific intent or knowledge, identity, plan, system, scheme, habit, custom or usage, and the like. (48 a)

SECTION 35. Unaccepted offer. — An offer in writing to pay a particular sum of money or to deliver a written instrument or specific personal property is, if rejected without valid cause, equivalent to the actual production and tender of the money instrument, or property. (49 a)

5. TESTIMONIAL KNOWLEDGE

SECTION 36. Testimony generally confined to personal knowledge; hearsay excluded. — A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules. (30 a)

6. EXCEPTIONS TO THE HEARSAY RULE

SECTION 37. Dying declaration. — The declaration of a dying person, made under the consciousness of an impending death, may be received in any case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death. (31 a)

SECTION 38. Declaration against interest. — The declaration made by a person deceased, or 'unable to testify, against the interest of the declarant, if the fact asserted in the declaration was at the time it was made so far contrary to declarant's own interest, that a reasonable man in his position would not have made the declaration unless he believed it to be true, may be received in evidence against himself or his successors in interest and against third persons. (32 a)

SECTION 39. Act or declaration about pedigree. — The act or declaration of a person deceased, or unable to testify, in respect to the pedigree of another person related to him by birth or marriage, may be received in evidence where it occurred before the controversy, and the relationship between the two persons is shown by evidence other than such act or declaration. The word "pedigree" includes relationship, family genealogy, birth, marriage, death, the dates when and the places where these facts occurred, and the names of the relatives. It embraces also facts of family history intimately connected with pedigree. (33 a)

SECTION 40. Family reputation or tradition regarding pedigree. — The reputation or tradition existing in a family previous to the controversy, in respect to the pedigree of any one of its members, may be received in evidence if the witness testifying thereon be also a member of the family, either by consanguinity or affinity. Entries in

family bibles or other family books or charts, engravings on rings, family portraits and the like, may be received as evidence of pedigree. (34 a)

SECTION 41. Common reputation. — Common reputation existing previous to the controversy, respecting facts of public or general interest more than thirty years old, or respecting marriage or moral character, may be given in evidence. Monuments and inscriptions in public places may be received as evidence of common reputation. (35)

SECTION 42. Part of the res gestae. — Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the res gestae. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the res gestae. (36 a)

SECTION 43. Entries in the course of business. — Entries made at, or near the time of the transactions to which they refer, by a person deceased, or unable to testify, who was in a position to know the facts therein stated, may be received as prima facie evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty. (37 a)

SECTION 44. Entries in official records. — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts therein stated. (38)

SECTION 45. Commercial lists and the like. — Evidence of statements of matters of interest, to persons engaged in an occupation contained in a list, register, periodical, or other published compilation is admissible as tending to prove the truth of any relevant matter so stated if that compilation is published for use by persons engaged in that occupation and is generally used and relied upon by them therein. (39)

SECTION 46. Learned treatises. — A published treatise, periodical or pamphlet on a subject of history, law, science or art is admissible as tending to prove the truth of a matter stated therein if the court takes judicial notice, or a witness expert in the subject testifies. that the writer of the statement in the treatise, periodical or pamphlet is recognized in his profession or calling as expert in the subject. (40 a)

SECTION 47. Testimony or deposition at a former proceeding. — The testimony or deposition of a witness deceased or unable to testify, given in a former case or proceeding, judicial or administrative, involving the same parties and subject matter, may be given in evidence against the adverse party who had the opportunity to cross-examine him. (41 a)

7. OPINION RULE

SECTION 48. General rule. — The opinion of a witness is not admissible, except as indicated in the following sections. (42)

SECTION 49. Opinion of expert witness. — The opinion of a witness on a matter requiring special knowledge, skill, experience or training which he is shown to possess, may be received in evidence. (43 a)

SECTION 50. Opinion of ordinary witnesses. — The opinion of a witness for which proper basis is given, may be received in evidence regarding —

(a) the identity of a person about whom he has adequate knowledge;

(b) A handwriting with which he has sufficient familiarity; and

(c) The mental sanity of a person with whom he is sufficiently acquainted.

The witness may also testify on his impressions of the emotion, behavior, condition or appearance of a person. (44a)

8. CHARACTER EVIDENCE

SECTION 51. Character evidence not generally admissible; exceptions. —

(a) In Criminal Cases:

(1) The accused may prove his good moral character which is pertinent to the moral trait involved in the offense charged.

(2) Unless in rebuttal, the prosecution may not prove his bad moral character which is pertinent it to the moral trait involved in the offense charged.

(3) The good or bad moral character of the offended party may be proved if it tends to establish in any reasonable degree the probability or improbability of the offense charged.

(b) In Civil Cases:

Evidence of the moral character of a panty in a civil case is admissible only when pertinent to the issue of character involved in the case.

(c) In the case provided for in Rule 132, Section 14. (46 a, 47 a)

RULE 131
BURDEN OF PROOF AND PRESUMPTIONS

SECTION 1. Burden of proof . — Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law. (1 a, 2 a)

SECTION 2. Conclusive presumptions. — The following are instances of conclusive presumptions:

(a) Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it:

(b) The tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation of landlord and tenant between them. (3 a)

SECTION 3. Disputable presumptions. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

(a) That a person is innocent of crime or wrong;

(b) That an unlawful act was done with an unlawful intent;

(c) That a person intends the ordinary consequences of his voluntary act;

(d) That a person takes ordinary care of his concerns;

(e) That evidence willfully suppressed would be adverse if produced;

(f) That money paid by one to another was due to the latter;

(g) That a thing delivered by one to another belonged to the latter;

(h) That an obligation delivered up to the debtor has been paid;

(i) That prior rents or installments had been paid when a receipt for the later ones is produced;

(j) That a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act; otherwise, that things which a person possesses, or exercises acts of ownership over, are owned by him;

(k) That a person in possession of an order on himself for the payment of the money, or the delivery of anything, has paid the money or delivered the thing accordingly;

(l) That a person acting in a public office was regularly appointed or elected to it;

(m) That official duty has been regularly performed;

(n) That a court, or judge acting as such, whether in the Philippines or elsewhere, was acting in the lawful exercise of jurisdiction;

(o) That all the matters within an issue raised in a case were laid before the court and passed upon by it; and in like manner that all matters within an issue raised in a dispute submitted for arbitration were laid before the arbitrators and passed upon by them;

(p) That private transactions have been fair and regular;

(q) That the ordinary course of business has been followed;

(r) That there was a sufficient consideration for a contract;

(s) That a negotiable instrument was given or indorsed for a sufficient consideration;

(t) That an indorsement of a negotiable instrument was made before the instrument was overdue and at the place where the instrument is dated;

(u) That a writing is truly dated;

(v) That a letter duly directed and mailed was received in the regular course of the mail;

(w) That after an absence of seven years, it being unknown whether or not the absentee still lives, he is considered dead for all purposes, except for those of succession.

The absentee shall not be considered dead for the purpose of opening his succession till after an absence of ten years. If he disappeared after the age of seventy-five years, an absence of five years shall be sufficient in order that his succession may be opened.

The following shall be considered dead for all purposes including the division of the estate among the heirs:

(1) A person on board a vessel lost during a sea voyage, or an aircraft which is missing, who has not been heard of for four years since the loss of the vessel or aircraft;

(2) A member of the armed forces who has taken part in armed hostilities, and has been missing for four years;

(3) A person who has been in danger of death under other circumstances and whose existence has not been known for four years;

(4) If a married person has been absent for four consecutive years, the spouse present may contract a subsequent marriage if he or she has a well-founded belief that the absent spouse is already dead. In case of disappearance, where there is danger of death under the circumstances hereinabove provided, an absence of only two years shall be sufficient for the purpose of contracting a subsequent marriage. However, in any case, before marrying again, the spouse present must institute a summary proceeding as provided in the Family Code and in the rules for a declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse.

(x) That acquiescence resulted from a belief that the thing acquiesced in was conformable to the law or fact;

(y) That things have happened according to the ordinary course of nature and the ordinary habits of life;

(z) That persons acting as copartners have entered into a contract of co-partnership;

(aa) That a man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage;

(bb) That property acquired by a man and a woman who are capacitated to marry each other and who live exclusively with each

other as husband and wife without the benefit of marriage or under a void marriage, has been obtained by their joint efforts, work or industry.

(cc) That in cases of cohabitation by a man and a woman who are not capacitated to marry each other and who have acquired property through their actual joint contribution of money, property or industry, such contributions and their corresponding shares including joint deposits of money and evidences of credit are equal.

(dd) That if the marriage is terminated and the mother contracted another marriage within three hundred days after such termination of the former marriage, these rides shall govern in the absence of proof to the contrary:

(1) A child born before one hundred eighty days after the solemnization of the subsequent marriage is considered to have been conceived during the former marriage, provided it be born within three hundred days after the termination of the former marriage;

(2) A child born after one hundred eighty days following the celebration of the subsequent marriage is considered to have been conceived during such marriage, even though it be born within the three hundred days after the termination of the former marriage.

(ee) That a thing once proved to exist continues as long as is usual with things of that nature;

(ff) That the law has been obeyed;

(gg) That a printed or published book, purporting to be printed or published by public authority, was so printed or published;

(hh) That a printed or published book, purporting to contain reports of cases adjudged in tribunals of the country where the book is published, contains correct reports of such cases;

(ii) That a trustee or other person whose duty it was to convey real property to a particular person has actually conveyed it to him when

such presumption is necessary to perfect the title of such person or his successor in interest;

(jj) That except for purposes of succession, when two persons perish in the same calamity, such as wreck, battle, or conflagration, and it is not shown who died first, and there are no particular circumstances from which it can be inferred, the survivorship is determined from the probabilities resulting from the strength and age of the sexes, according to the following rules:

1. If both were under the age of fifteen years, the older is deemed to have survived;

2. If both were above the age of sixty, the younger is deemed to have survived;

3. If one is under fifteen and the other above sixty, the former is deemed to have survived;

4. If both be over fifteen and under sixty, and the sex be different, the male is deemed to have survived; if the sex be the same, the older;

5. If one be under fifteen or over sixty, and the other between those ages, the latter is deemed to have survived.

(kk) That if there is a doubt, as between two or more persons who are called to succeed each other, as to which of them died first, whoever alleges the death of one prior to the other, shall prove the same; in the absence of proof, they shall be considered to have died at the same time. (5a)

SECTION 4. No presumption of legitimacy or illegitimacy. — There is no presumption of legitimacy or illegitimacy of a child born after three hundred days following the dissolution of the marriage or the separation of the spouses. Whoever alleges the legitimacy or illegitimacy of such child must prove his allegation. (6)

RULE 132
PRESENTATION OF EVIDENCE

A. EXAMINATION OF WITNESSES

SECTION 1. Examination to be done in open court. — The examination of witnesses presented in a trial or hearing shall be done in open court, and under oath or affirmation. Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally. (1 a)

SECTION 2. Proceedings to be recorded. — The entire proceedings of a trial or hearing, including the questions propounded to a witness and his answers thereto, the statements made by the judge or any of the parties, counsel, or witnesses with reference to the case, shall be recorded by means of shorthand or stenotype or by other means of recording found suitable by the court.

A transcript of the record of the proceedings made by the official stenographer, stenotypist or recorder and certified as correct by him shall be deemed prima facie a correct statement of such proceedings. (2 a)

SECTION 3. Rights and obligations of a witness. — A witness must answer questions, although his answer may tend to establish a claim against him. However, it is the right of a witness:

(1) To be protected from irrelevant, improper, or insulting questions, and from harsh or insulting demeanor;

(2) Not to be detained longer than the interests of justice require;

(3) Not to be examined except only as to matters pertinent to the issue;

(4) Not to give an answer which will tend to subject him to a penalty for an offense unless otherwise provided by law; or

(5) Not to give an answer which will tend to degrade his reputation, unless it be to the very fact at issue or to a fact from which the fact in

issue would be presumed. But a witness must answer to the fact of his previous final conviction for an offense. (3a, 19a)

SECTION 4. Order in the examination of an individual witness. — The order in which an individual witness may be examined is as follows:

(a) Direct examination by the proponent;

(b) Cross-examination by the opponent;

(c) Re-direct examination by the proponent;

(d) Re-cross-examination by the opponent. (4)

SECTION 5. Direct examination. — Direct examination is the examination-in-chief of a witness by the party presenting him on the facts relevant to the issue. (3a)

SECTION 6. Cross-examination; its purpose and extent. — Upon the termination of the direct examination, the witness may be cross-examined by the adverse party as to any matters stated in the direct examination, or connected therewith, with sufficient fullness and freedom to. test his accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue. (8a)

SECTION 7. Re-direct examination; its purpose and extent. — After the cross-examination of the witness has been concluded, he may be re-examined by the party calling him, to explain or supplement his answers given during the cross-examination. On re-direct examination, questions on matters not dealt with during the cross-examination, may be allowed by the court in its discretion. (12)

SECTION 8. Re-cross-examination. — Upon the conclusion of the re-direct examination, the adverse party may re-cross-examine the witness on matters stated in his re-direct examination, and also on such other matters as may be allowed by the court in its discretion. (13)

SECTION 9. Recalling witness. — After the examination of a witness by both sides has been concluded, the witness cannot be recalled without leave of the court. The court will grant or withhold leave in its discretion, as the interests of justice may require. (14)

SECTION 10. Leading and misleading questions. — A question which suggests to the witness the answer which the examining party desires is a leading question. It is not allowed, except:

(a) On cross examination;

(b) On Preliminary matters;

(c) When there is difficulty in getting direct and intelligible answers from a witness who is ignorant, or a child of tender years, or is of feeble mind, or a deaf-mute;

(d) Of an unwilling or hostile witness; or

(e) Of a witness who is an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party.

A misleading question is one which assumes as true a fact not yet testified to by the witness, or contrary to that which he has previously stated. It is not allowed. (5 a, 6 a, and 8 a)

SECTION 11. Impeachment of adverse party's witness. — A witness may be impeached by the party against whom he was called, by contradictory evidence, by evidence that his general reputation for truth, honesty, or integrity is bad, or by evidence that he has made at other times statements inconsistent with his present testimony, but not by evidence of particular wrongful acts, except that it may be shown by the examination of the witness, or the record of the judgment, that he has been convicted of an offense. (15)

SECTION 12. Party may not impeach his own witness. — Except with respect to witnesses referred to in paragraphs (d) and (e)of Section 10, the party producing a witness is not allowed to impeach his credibility.

A witness may be considered as unwilling or hostile only if so declared by the court upon adequate showing of his adverse interest, unjustified reluctance to testify, or his having misled the party into calling him to the witness stand.

The unwilling or hostile witness so declared, or the witness who is an adverse party, may be impeached by the party presenting him in all respects as if he had been called by the adverse party, except by evidence of his bad character. He may also be impeached and cross-examined by the adverse party, but such cross examination must only be on the subject matter of his cross-examination-in-chief. (6a, 7a)

SECTION 13. How witness impeached by evidence of inconsistent statements. — Before a witness can be impeached by evidence that he has made at other times statements inconsistent with his present testimony, the statements must be related to him, with the circumstances of the times and places and the persons present, and he must be asked whether he made such statements, and if so, allowed to explain them. If the statements be in writing they must be shown to the witness before any question is put to him concerning them. (16)

SECTION 14. Evidence of good character of witness. — Evidence of the good character of a witness is not admissible until such character has been impeached. (17)

SECTION 15. Exclusion and separation of witnesses. — On any trial or hearing, the judge may exclude from the court any witness not at the time under examination, so that he may not hear the testimony of other witnesses. The judge may also cause witnesses to be kept separate and to be prevented from conversing with one another until all shall have been examined. (18)

SECTION 16. When witness may refer to memorandum. — A witness may be allowed to refresh his memory respecting a fact, by anything written or recorded by himself or under his direction at the time when the fact occurred, or immediately thereafter, or at any other time when the fact was fresh in his memory and he knew that the same was correctly written or recorded; but in such case the

writing or record must be produced and may be inspected by the adverse party, who may, if he chooses, cross-examine the witness upon it, and may read it in evidence. So, also, a witness may testify from such a writing or record, though he retain no recollection of the particular facts, if he is able to swear that the writing or record correctly stated the transaction when made; but such evidence must be received with caution. (10 a)

SECTION 17. When part of transaction, writing or record given in evidence, the remainder admissible. — When part of an act, declaration, conversation, writing or record is given in evidence by one party, the whole of the same subject may be inquired into by the other, and when a detached act, declaration, conversation, writing or record is given in evidence, any other act, declaration, conversation, writing or record necessary to its understanding may also be given in evidence. (11 a)

SECTION 18. Right to inspect writing shown to witness. — Whenever a writing is shown to a witness, it may be inspected by the adverse party. (9a)

B. AUTHENTICATION AND PROOF OF DOCUMENTS

SECTION 19. Classes of documents. — For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

(b) Documents acknowledged before a notary public except last wills and testaments; and

(c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private. (20a)

SECTION 20. Proof of private document. — Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

(a) By anyone who saw the document executed or written; or

(b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be. (21a)

SECTION 21. When evidence of authenticity of private document not necessary. — Where a private document is more than thirty years old, is produced from a custody in which it would naturally be found if genuine, and is unblemished by any alterations or circumstances of suspicion, no other evidence of its authenticity need be given. (22 a)

SECTION 22. How genuineness of handwriting proved. — The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge. (23 a)

SECTION 23. Public documents as evidence. — Documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter. (24 a)

SECTION 24. Proof of official record. — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the

legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. (25a)

SECTION 25. What attestation of copy must state. — Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court. (26 a)

SECTION 26. Irremovability of public record. — Any public record, an official copy of which is admissible in evidence, must not be removed from the office in which it is kept, except upon order of a court where the inspection of the record is essential to the just determination of a pending case. (27 a)

SECTION 27. Public record of a private document. — An authorized public record of a private document may be proved by the original record, or by a copy thereof, attested by the legal custodian of the record, with an appropriate certificate that such officer has the custody. (28a)

SECTION 28. Proof of lack of record. — A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry. (29)

SECTION 29. How judicial record impeached. — Any judicial record may be impeached by evidence of: (a) want of jurisdiction in the court or judicial officer, (b) collusion between the parties, or (c)

fraud in the party offering the record, in respect to the proceedings. (30a)

SECTION 30. Proof of notarial documents. — Every instrument duly acknowledged or proved and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgment being prima facie evidence of the execution of the instrument or document involved. (31a)

SECTION 31. Alterations in document, how to explain. — The party producing a document as genuine which has been altered and appears to have been altered after its execution, in a part material to the question in dispute, must account for the alteration. He may show that the alteration was made by another, without his concurrence, or was made with the consent of the parties affected by it, or was otherwise properly or innocently made, or that the alteration did not change the meaning or language of the instrument. If he fails to do that the document shall not be admissible in evidence. (32a)

SECTION 32. Seal. — There shall be no difference between sealed and unsealed private documents insofar as their admissibility as evidence is concerned. (33a)

SECTION 33. Documentary evidence in an unofficial language. — Documents written in an unofficial language shall not be admitted as evidence, unless accompanied with a translation into English or Filipino. To avoid interruption of proceedings, parties or their attorneys are directed to have such translation prepared before trial. (34a)

C. OFFER AND OBJECTION

SECTION 34. Offer of evidence. — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified. (35)

SECTION 35. When to make offer. — As regards the testimony of a witness, the offer must be made at the time the witness is called to testify.

Documentary and object evidence shall be offered after the presentation of a party's testimonial evidence. Such offer shall be done orally unless allowed by the court to be done in writing.(n)

SECTION 36. Objection. — Objection to evidence offered orally must be made immediately after the offer is made.

Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent.

An offer of evidence in writing shall be objected to within three (3) days after notice of the offer unless a different period is allowed by the court.

In any case, the grounds for the objections must be specified.(36a)

SECTION 37. When repetition of objection unnecessary. — When it becomes reasonably apparent in the course of the examination of a witness that the questions being propounded are of the same class as those to which objection has been made, whether such objection was sustained or overruled, it shall not be necessary to repeat the objection, it being sufficient for the adverse party to record his continuing objection to such class of questions. (37 a)

SECTION 38. Ruling. — The ruling of the court must be given immediately after the objection is made, unless the court desires to take a reasonable time to inform itself on the question presented; but the ruling shall always be made during the trial and at such time as will give the party against whom it is made an opportunity to meet the situation presented by the ruling.

The reason for sustaining or overruling an objection need not be stated. However, if the objection is based on two or more grounds, a ruling sustaining the objection on one or some of them must specify the ground or grounds relied upon. (38 a)

SECTION 39. Striking out answer. — Should a witness answer the question before the adverse party had the opportunity to voice fully its objection to the same, and such objection is found to be

meritorious, the court shall sustain the objection and order the answer given to be stricken off the record.

On proper motion, the court may also order the striking out of answers which are incompetent, irrelevant, or otherwise improper. (n)

SECTION 40. Tender of excluded evidence. — If documents or things offered in evidence are excluded by the court, the offer or may have the same attached to or made part of the record. If the evidence excluded is oral, the offer or may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony. (n)

RULE 133
WEIGHT AND SUFFICIENCY OF EVIDENCE

SECTION 1. Preponderance of evidence, how determined. — In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number. (1 a)

SECTION 2. Proof beyond reasonable doubt. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. (2a)

SECTION 3. Extrajudicial confession, not sufficient ground for conviction. — An extrajudicial confession made by an accused, shall not be sufficient ground for conviction, unless corroborated by evidence of corpus delicti. (3)

SECTION 4. Circumstantial evidence, when sufficient. — Circumstantial evidence is sufficient for conviction if;

(a) There is more than one circumstance;

(b) The facts from which the inferences are derived are proven; and

(c) The combination of all the circumstances' is such as to produce a conviction beyond reasonable doubt. (5)

SECTION 5. Substantial evidence. — In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. (n)

SECTION 6. Power of the court to stop further evidence. — The court may stop the introduction of further testimony upon any particular point when the evidence upon it is already so full that more witnesses to the same point cannot be reasonably expected to be additionally persuasive. But this power should be exercised with caution. (6)

SECTION 7. Evidence on motion. — When a motion is based on facts not appearing of record the court may hear the matter on affidavits or depositions presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions. (7)

RULE 134
PERPETUATION OF TESTIMONY

SECTION 1. 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 province of the residence of any expected adverse party.

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.

SECTION 3. Notice and service. — The petitioner shall thereafter 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 hearing the notice shall be served in the manner provided for service of summons.

SECTION 4. Order of 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 then be taken in accordance with Rule 24 before the hearing.

SECTION 5. Reference to court. — For the purpose of applying Rule 24 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.

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 subsequently brought in accordance with the provisions of Sections 4 and 5 of Rule 24.

SECTION 7. Depositions pending appeal. — If an appeal has been taken from a judgment of the Regional Trial Court or before the taking of an appeal if the time therefor has not expired, the Regional Trial Court in which the judgment was rendered may allow the taking of depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the said court. In such case the party who desires to perpetuate the testimony may make a motion in the said Regional Trial Court for leave to take the depositions, upon the same notice and service thereof as if the action was pending therein. The motion shall show (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 depositions 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 actions pending in the Regional Trial Court. (7a)

PART V
LEGAL ETHICS

RULE 135*

Powers and Duties of Courts and Judicial Officers

SECTION 1. Courts always open; justice to be promptly and impartially administered. — Courts of justice shall always be open, except on legal holidays, for the filing of any pleading, motion or other papers, for the trial of cases, hearing of motions, and for the issuance of orders or rendition of judgments. Justice shall be impartially administered without unnecessary delay.

SECTION 2. Publicity of proceedings and records. — The sitting of every court of justice shall be public, but any court may, in its discretion, exclude the public when the evidence to be adduced is of

such nature as to require their exclusion in the interest of morality or decency. The records of every court of justice shall be public records and shall be available for the inspection of any interested person, at all proper business hours, under the supervision of the clerk having custody of such records, unless the court shall, in any special case, have forbidden their publicity, in the interest of morality or decency.

SECTION 3. Process of superior courts enforced throughout the Philippines. — Process issued from a superior court in which a case is pending to bring in a defendant, or for the arrest of any accused person, or to execute any order or judgment of the court, may be enforced in any part of the Philippines.

SECTION 4. Process of inferior courts. — The process of inferior court shall be enforceable within the province where the municipality or city lies. It shall not be served outside the boundaries of the province in which they are comprised except with the approval of the judge of first instance of said province, and only in the following cases:

(a) When an order for the delivery of personal property lying outside the province is to be complied with;

(b) When an attachment of real or personal property lying outside the province is to be made;

(c) When the action is against two or more defendants residing in different provinces; and

(d) When the place where the case has been brought is that specified in a contract in writing between the parties, or is the place of the execution of such contract as appears therefrom.

Writs of execution issued by inferior courts may be enforced in any part of the Philippines without any previous approval of the judge of first instance.

Criminal process may be issued by a justice of the peace or other inferior court, to be served outside his province, when the district

judge, or in his absence the provincial fiscal, shall certify that in his opinion the interests of justice require such service.

SECTION 5. Inherent powers of courts. — Every court shall have power:

(a) To preserve and enforce order in its immediate presence;

(b) To enforce order in proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority;

(c) To compel obedience to its judgments, orders and processes, and to the lawful orders of a judge out of court, in a case pending therein;

(d) To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a case before it, in every manner appertaining thereto;

(e) To compel the attendance of persons to testify in a case pending therein;

(f) To administer or cause to be administered oaths in a case pending therein, and in all other cases where it may be necessary in the exercise of its powers;

(g) To amend and control its process and orders so as to make them conformable to law and justice;

(h) To authorize a copy of a lost or destroyed pleading or other paper to be filed and used instead of the original, and to restore, and supply deficiencies in its records and proceedings.

SECTION 6. Means to carry jurisdiction into effect. — When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of

proceeding may be adopted which appears conformable to the spirit of said law or rules.

SECTION 7. Trials and hearings; orders in chambers. — All trials upon the merits shall be conducted in open court and so far as convenient in a regular court room. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the clerk or other court officials.

SECTION 8. Interlocutory orders out of province. — A judge of first instance shall have power to hear and determine, when within the district though without his province, any interlocutory motion or issue after due and reasonable notice to the parties. On the filing of a petition for the writ of habeas corpus or for release upon bail or reduction of bail in any Court of First Instance, the hearings may be had at any place in the judicial district which the judge shall deem convenient.

SECTION 9. Signing judgments out of province. — Whenever a judge appointed or assigned in any province or branch of a Court of First Instance in a province shall leave the province by transfer or assignment to another court of equal jurisdiction, or by expiration of his temporary assignment, without having decided a case totally heard by him and which was argued or an opportunity given for argument to the parties or their counsel, it shall be lawful for him to prepare and sign his decision in said case anywhere within the Philippines. He shall send the same by registered mail to the clerk of the court where the case was heard or argued to be filed therein as of the date when the same was received by the clerk, in the same manner as if he had been present in court to direct the filing of the judgment. If a case has been heard only in part, the Supreme Court, upon petition of any of the parties to the case and the recommendation of the respective district judge, may also authorize the judge who has partly heard the case, if no other judge had heard the case in part, to continue hearing and to decide said case notwithstanding his transfer or appointment to another court of equal jurisdiction.
*(*As amended)*

RULE 136*

(As amended by SC resolution dated November 10, 1967)

Court Record and General Duties of Clerks and Stenographers

SECTION 1. Arms and great seal of court. — The arms and great seal of the Supreme Court are these:

"Arms — Plaeways of two pieces of azure and gules superimposed a balance or center with two tablets containing the commandments of God or on either side; a chief argent with three mullets or equidistant from each other, in point of honor, avoid argent over all the sun, rayonnant or with eight major and minor rays.

"The great seal of the Supreme Court shall be circular in form, with the arms as described in the last preceding paragraph and scroll argent with the following inscription: Lex Populusque, and surrounding the whole a garland of laurel leaves in or; around the garland the text 'Supreme Court, Republic of the Philippines.'

"The arms and seal of the Court of Appeals shall be the same as that of the Supreme Court with the only difference that in the seal shall bear around the garland the text 'Court of Appeals, Republic of the Philippines.'

"The arms and seal of the Court of First Instance shall be the same as that of the Supreme Court with the only difference that the seal shall bear around the garland the text 'Court of First Instance, the name of the province, Republic of the Philippines.'

SECTION 2. Style of process. — Process shall be under the seal of the court from which it issues, be styled "Republic of the Philippines, Province or City of _____" to be signed by the clerk and bear date the day it actually issued.

SECTION 3. Clerk's office. — The clerk's office, with the clerk or his deputy in attendance, shall be open during business hours on all days except Sundays and legal holidays. The clerk of the Supreme Court and that of the Court of Appeals shall keep office at Manila and

all papers authorized or required to be filed therein shall be filed at Manila.

SECTION 4. Issuance by clerk of process. — The clerk of a superior court shall issue under the seal of the court all ordinary writs and process incident to pending cases, the issuance of which does not involve the exercise of functions appertaining to the court or judge only; and may, under the direction of the court or judge, make out and sign letters of administration, appointments of guardians, trustees, and receivers, and all writs and process issuing from the court.

SECTION 5. Duties of the clerk in the absence or by direction of the judge. — In the absence of the judge, the clerk may perform all the duties of the judge in receiving applications, petitions, inventories, reports, and the issuance of all orders and notices that follow as a matter of course under these rules, and may also, when directed so to do by the judge, receive the accounts of executors, administrators, guardians, trustees, and receivers, and all evidence relating to them, or to the settlement of the estates of deceased persons, or to guardianships, trusteeships, or receiverships, and forthwith transmit such reports, accounts, and evidence to the judge, together with his findings in relation to the same, if the judge shall direct him to make findings and include the same in his report.

SECTION 6. Clerk shall receive papers and prepare minutes. — The clerk of each superior court shall receive and file all pleadings and other papers properly presented, endorsing on each such paper the time when it was filed, and shall attend all of the sessions of the court and enter its proceedings for each day in a minute book to be kept by him.

SECTION 7. Safekeeping of property. — The clerk shall safely keep all records, papers, files, exhibits and public property committed to his charge, including the library of the court, and the seals and furniture belonging to his office.

SECTION 8. General docket. — The clerk shall keep a general docket, each page of which shall be numbered and prepared for receiving all the entries in a single case, and shall enter therein all

cases, numbered consecutively in the order in which they were received, and, under the heading of each case and a complete title thereof, the date of each paper filed or issued, of each order or judgment entered, and of each other step taken in the case so that by reference to a single page the history of the case may be seen.

SECTION 9. Judgment and entries book. — The clerk shall keep a judgment book containing a copy of each judgment rendered by the court in order of its date, and a book of entries of judgments containing at length in chronological order entries of all final judgments or orders of the court.

SECTION 10. Execution book. — The clerk shall keep an execution book in which he or his deputy shall record at length in chronological order each execution, and the officer's return thereon, by virtue of which real property has been sold.

SECTION 11. Certified copies. — The clerk shall prepare, for any person demanding the same, a copy certified under the seal of the court of any paper, record, order, judgment, or entry in his office, proper to be certified, for the fees prescribed by these rules.

SECTION 12. Other books and duties. — The clerk shall keep such other books and perform such other duties as the court may direct.

SECTION 13. Index; separating cases. — The general docket, judgment book, entries book and execution book shall each be indexed in alphabetical order in the names of the parties, and each of them. If the court so directs, the clerk shall keep two or more of either or all of the books and dockets above mentioned, separating civil from criminal cases, or actions from special proceedings, or otherwise keeping cases separated by classes as the court shall deem best.

SECTION 14. Taking of record from the clerk's office. — No record shall be taken from the clerk's office without an order of the court except as otherwise provided by these rules. However, the Solicitor General or any of his assistants, the provincial fiscal or his deputy, and the attorneys de oficio shall be permitted, upon proper receipt, to withdraw from the clerk's office the record of any cases in which they are interested.

SECTION 15*. Unprinted papers. — All printed documents presented to the superior courts of the Philippines shall be written on paper of good quality twelve and three eights inches in length by eight and one-half inches in width, leaving a margin at the top and at the left-hand side not less than one inch and one-half in width. Papel catalan, of the first and second classes, legal cap, and typewriting paper of such weight as not to permit the writing of more than one original and two carbons at one time, will be accepted, provided that such paper is of the required size and of good quality. Documents written with ink shall not be of more than twenty-five lines to one page. Typewritten documents shall be written double-spaced. One side only of the page will be written upon, and the different sheets will be sewn together, firmly, by five stitches in the left-hand border in order to facilitate the formation of the expediente, and they must not be doubled.

SECTION 16**. Printed papers. — All papers required by these rules to be printed shall be printed with black ink on unglazed paper, with pages six inches in width by nine inches in length, in pamphlet form. The type used shall not be smaller than twelve point. The paper used shall be of sufficient weight to prevent the printing upon one side from being visible upon the other.

SECTION 17. Stenographer. — It shall be the duty of the stenographer who has attended a session of a court either in the morning or in the afternoon, to deliver to the clerk of court, immediately at the close of such morning or afternoon session, all the notes he has taken, to be attached to the record of the case; and it shall likewise be the duty of the clerk to demand that the stenographer comply with said duty. The clerk of court shall stamp the date on which such notes are received by him. When such notes are transcribed the transcript shall be delivered to the clerk, duly initialed on each page thereof, to be attached to the record of the case.

Whenever requested by a party, any statement made by a judge of first instance, or by a commissioner, with reference to a case being tried by him, or to any of the parties thereto, or to any witness or attorney, during the hearing of such case, shall be made of record in the stenographic notes.

SECTION 18. Docket and other records of inferior courts. — Every justice of the peace and municipal judge shall keep a well-bound book labeled "docket," in which he shall enter for each case:

(a) The title of the case including the names of all the parties;

(b) The nature of the case, whether civil or criminal, and if the latter, the offense charged;

(c) The date of issuing preliminary and intermediate process including orders of arrest and subpoenas, and the date and nature of the return thereon;

(d) The date of the appearance or default of the defendant;

(e) The date of presenting the plea, answer, or motion to quash, and the nature of the same;

(f) The minutes of the trial, including the date thereof and of all adjournments;

(g) The names and addresses of all witnesses;

(h) The date and nature of the judgment, and, in a civil case, the relief granted;

(i) An itemized statement of the costs;

(j) The date of any execution issued, and the date and contents of the return thereon;

(k) The date of any notice of appeal filed, and the name of the party filing the same.

A municipal (or city) judge may keep two dockets, one for civil and one for criminal cases. He shall also keep all the pleadings and other papers and exhibits in cases pending in his court, and shall certify copies of his docket entries and other records proper to be certified, for the fees prescribed by these rules. It shall not be necessary for the

municipal (or city) judge to reduce to writing the testimony of witnesses, except that of the accused in preliminary investigations.

SECTION 19. Entry on docket of inferior courts. — Each municipal (or city) judge shall, at the beginning and in front of all his entries in his docket, make and subscribe substantially the following entry:

"A docket of proceedings in cases before _____, municipal judge (or city judge) of the municipality (or city) of _____, in the province of _____, Republic of the Philippines.
Witness my signature,

_____
"Municipal Judge (or City Judge)"
*(*As amended)*

RULE 137
Disqualification of Judicial Officers

SECTION 1. Disqualification of judges. — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

SECTION 2. Objection that judge disqualified, how made and effect. — If it be claimed that an official is disqualified from sitting as above provided, the party objecting to his competency may, in writing, file with the official his objection, stating the grounds therefor, and the official shall thereupon proceed with the trial, or withdraw therefrom, in accordance with his determination of the

question of his disqualification. His decision shall be forthwith made in writing and filed with the other papers in the case, but no appeal or stay shall be allowed from, or by reason of, his decision in favor of his own competency, until after final judgment in the case.

RULE 138*
Attorneys and Admission to Bar

SECTION 1. Who may practice law. — Any person heretofore duly admitted as a member of the bar, or hereafter admitted as such in accordance with the provisions of this rule, and who is in good and regular standing, is entitled to practice law.

SECTION 2. Requirements for all applicants for admission to the bar. — Every applicant for admission as a member of the bar must be a citizen of the Philippines, at least twenty-one years of age, of good moral character, and a resident of the Philippines; and must produce before the Supreme Court satisfactory evidence of good moral character, and that no charges against him, involving moral turpitude, have been filed or are pending in any court in the Philippines.

SECTION 3. Requirements for lawyers who are citizens of the United States of America. — Citizens of the United States of America who, before July 4, 1946, were duly licensed members of the Philippine Bar, in active practice in the courts of the Philippines and in good and regular standing as such may, upon satisfactory proof of those facts before the Supreme Court, be allowed to continue such practice after taking the following oath of office:

"I, _____, having been permitted to continue in the practice of law in the Philippines, do solemnly swear that I recognize the supreme authority of the Republic of the Philippines; I will support its Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same; I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion with all good fidelity as well to the courts as to my clients;

and I impose upon myself this voluntary obligation without any mental reservation or purpose of evasion. So help me God."

SECTION 4. Requirements for applicants from other jurisdictions. — Applicants for admission who, being Filipino citizens, are enrolled attorneys in good standing in the Supreme Court of the United States or in any circuit court of appeals or district court therein, or in the highest court of any State or Territory of the United States, and who can show by satisfactory certificates that they have practiced at least five years in any of said courts, that such practice began before July 4, 1946, and that they have never been suspended or disbarred, may, in the discretion of the Court, be admitted without examination.

SECTION 5. Additional requirements for other applicants. — All applicants for admission other than those referred to in the two preceding sections shall, before being admitted to the examination, satisfactorily show that they have regularly studied law for four years, and successfully completed all prescribed courses, in a law school or university, officially approved and recognized by the Secretary of Education. The affidavit of the candidate, accompanied by a certificate from the university or school of law, shall be filed as evidence of such facts, and further evidence may be required by the court.

No applicant shall be admitted to the bar examinations unless he has satisfactorily completed the following courses in a law school or university duly recognized by the government: civil law, commercial law, remedial law, criminal law, public and private international law, political law, labor and social legislation, medical jurisprudence, taxation and legal ethics.

SECTION 6. Pre-Law. — No applicant for admission to the bar examination shall be admitted unless he presents a certificate that he has satisfied the Secretary of Education that, before he began the study of law, he had pursued and satisfactorily completed in an authorized and recognized university or college, requiring for admission thereto the completion of a four-year high school course, the course of study prescribed therein for a bachelor's degree in arts or sciences with any of the following subjects as major or field of

concentration: political science, logic, english, spanish, history and economics.

SECTION 7. Time for filing proof of qualifications. — All applicants for admission shall file with the clerk of the Supreme Court the evidence required by section 2 of this rule at least fifteen (15) days before the beginning of the examination. If not embraced within sections 3 and 4 of this rule they shall also file within the same period the affidavit and certificate required by section 5, and if embraced within sections 3 and 4 they shall exhibit a license evidencing the fact of their admission to practice, satisfactory evidence that the same has not been revoked, and certificates as to their professional standing. Applicants shall also file at the same time their own affidavits as to their age, residence, and citizenship.

SECTION 8. Notice of applications. — Notice of applications for admission shall be published by the clerk of the Supreme Court in newspapers published in Pilipino, English and Spanish, for at least ten (10) days before the beginning of the examination.

SECTION 9. Examination; subjects. — Applicants, not otherwise provided for in sections 3 and 4 of this rule, shall be subjected to examinations in the following subjects: Civil Law; Labor and Social Legislation; Mercantile Law; Criminal Law; Political Law (Constitutional Law, Public Corporations, and Public Officers); International Law (Private and Public); Taxation; Remedial Law (Civil Procedure, Criminal Procedure, and Evidence); Legal Ethics and Practical Exercises (in Pleading and Conveyancing).

SECTION 10. Bar examination, by questions and answers, and in writing. — Persons taking the examination shall not bring papers, books or notes into the examination rooms. The questions shall be the same for all examinees and a copy thereof, in English or Spanish, shall be given to each examinee. Examinees shall answer the questions personally without help from anyone.

Upon verified application made by an examinee stating that his penmanship is so poor that it will be difficult to read his answers without much loss of time, the Supreme Court may allow such

examinee to use a typewriter in answering the questions. Only noiseless typewriters shall be allowed to be used.

The committee of bar examiners shall take such precautions as are necessary to prevent the substitution of papers or commission of other frauds. Examinees shall not place their names on the examination papers. No oral examination shall be given.

SECTION 11. Annual examination. — Examinations for admission to the bar of the Philippines shall take place annually in the City of Manila. They shall be held in four days to be designated by the chairman of the committee on bar examiners. The subjects shall be distributed as follows: First day: Political and International Law (morning) and Labor and Social Legislation (afternoon); Second day: Civil Law (morning) and Taxation (afternoon); Third day: Mercantile Law (morning) and Criminal Law (afternoon); Fourth day: Remedial Law (morning) and Legal Ethics and Practical Exercises (afternoon).

SECTION 12. Committee of examiners. — Examinations shall be conducted by a committee of bar examiners to be appointed by the Supreme Court. This committee shall be composed of a Justice of the Supreme Court, who shall act as chairman, and who shall be designated by the court to serve for one year, and eight members of the bar of the Philippines, who shall hold office for a period of one year. The names of the members of this committee shall be published in each volume of the official reports.

SECTION 13. Disciplinary measures. — No candidate shall endeavor to influence any member of the committee, and during examination the candidates shall not communicate with each other nor shall they give or receive any assistance. The candidate who violates this provision, or any other provision of this rule, shall be barred from the examination, and the same to count as a failure against him, and further disciplinary action, including permanent disqualification, may be taken in the discretion of the court.

SECTION 14. Passing average. — In order that a candidate may be deemed to have passed his examinations successfully, he must have obtained a general average of 75 per cent in all subjects, without falling below 50 per cent in any subject. In determining the average,

the subjects in the examination shall be given the following relative weights: Civil Law, 15 per cent; Labor and Social Legislation, 10 per cent; Mercantile Law, 15 per cent; Criminal Law; 10 per cent; Political and International Law, 15 per cent; Taxation, 10 per cent; Remedial Law, 20 per cent; Legal Ethics and Practical Exercises, 5 per cent.

SECTION 15. Report of the committee; filing of examination papers. — Not later than February 15th after the examination, or as soon thereafter as may be practicable, the committee shall file its reports on the result of such examination. The examination papers and notes of the committee shall be filed with the clerk and may there be examined by the parties in interest, after the court has approved the report.

SECTION 16. Failing candidates to take review course. — Candidates who have failed the bar examinations for three times shall be disqualified from taking another examination unless they show to the satisfaction of the court that they have enrolled in and passed regular fourth year review classes as well as attended a pre-bar review course in a recognized law school.

The professors of the individual review subjects attended by the candidates under this rule shall certify under oath that the candidates have regularly attended classes and passed the subjects under the same conditions as ordinary students and the ratings obtained by them in the particular subject.

SECTION 17. Admission and oath of successful applicants. — An applicant who has passed the required examination, or has been otherwise found to be entitled to admission to the bar, shall take and subscribe before the Supreme Court the corresponding oath of office.

SECTION 18. Certificate. — The Supreme Court shall thereupon admit the applicant as a member of the bar for all the courts of the Philippines, and shall direct an order to be entered to that effect upon its records, and that a certificate of such record be given to him by the clerk of court, which certificate shall be his authority to practice.

SECTION 19. Attorneys' roll. — The clerk of the Supreme Court shall keep a roll of all attorneys admitted to practice, which roll shall be signed by the person admitted when he receives his certificate.

SECTION 20. Duties of attorneys. — It is the duty of an attorney:

(a) To maintain allegiance to the Republic of the Philippines and to support the Constitution and obey the laws of the Philippines;

(b) To observe and maintain the respect due to the courts of justice and judicial officers;

(c) To counsel or maintain such actions or proceedings only as appear to him to be just, and such defenses only as he believes to be honestly debatable under the law;

(d) To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth and honor, and never seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law;

(e) To maintain inviolate the confidence, and at every peril to himself, to preserve the secrets of his client, and to accept no compensation in connection with his client's business except from him or with his knowledge and approval;

(f) To abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged;

(g) Not to encourage either the commencement or the continuance of an action or proceeding, or delay any man's cause, from any corrupt motive or interest;

(h) Never to reject, for any consideration personal to himself, the cause of the defenseless or oppressed;

(i) In the defense of a person accused of crime, by all fair and honorable means, regardless of his personal opinion as to the guilt of the accused, to present every defense that the law permits, to the end

that no person may be deprived of life or liberty, but by due process of law.

SECTION 21. Authority of attorney to appear. — An attorney is presumed to be properly authorized to represent any cause in which he appears, and no written power of attorney is required to authorize him to appear in court for his client, but the presiding judge may, on motion of either party and on reasonable grounds therefor being shown, require any attorney who assumes the right to appear in a case to produce or prove the authority under which he appears, and to disclose, whenever pertinent to any issue, the name of the person who employed him, and may thereupon make such order as justice requires. An attorney willfully appearing in court for a person without being employed, unless by leave of the court, may be punished for contempt as an officer of the court who has misbehaved in his official transactions.

SECTION 22. Attorney who appears in lower court presumed to represent client on appeal. — An attorney who appears de parte in a case before a lower court shall be presumed to continue representing his client on appeal, unless he files a formal petition withdrawing his appearance in the appellate court.

SECTION 23. Authority of attorneys to bind clients. — Attorneys have authority to bind their clients in any case by any agreement in relation thereto made in writing, and in taking appeals, and in all matters of ordinary judicial procedure. But they cannot, without special authority, compromise their client's litigation, or receive anything in discharge of a client's claim but the full amount in cash.

SECTION 24. Compensation of attorneys; agreement as to fees. — An attorney shall be entitled to have and recover from his client no more than a reasonable compensation for his services, with a view to the importance of the subject matter of the controversy, the extent of the services rendered, and the professional standing of the attorney. No court shall be bound by the opinion of attorneys as expert witnesses as to the proper compensation, but may disregard such testimony and base its conclusion on its own professional knowledge. A written contract for services shall control the amount to be paid

therefor unless found by the court to be unconscionable or unreasonable.

SECTION 25. Unlawful retention of client's funds; contempt. — When an attorney unjustly retains in his hands money of his client after it has been demanded, he may be punished for contempt as an officer of the Court who has misbehaved in his official transactions; but proceedings under this section shall not be a bar to a criminal prosecution.

SECTION 26. Change of attorneys. — An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party.

A client may at any time dismiss his attorney or substitute another in his place, but if the contract between client and attorney has been reduced to writing and the dismissal of the attorney was without justifiable cause, he shall be entitled to recover from the client the full compensation stipulated in the contract. However, the attorney may, in the discretion of the court, intervene in the case to protect his rights. For the payment of his compensation the attorney shall have a lien upon all judgments for the payment of money, and executions issued in pursuance of such judgment, rendered in the case wherein his services had been retained by the client.

SECTION 27. Disbarment or suspension of attorneys by Supreme Court; grounds therefor. — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority so to

do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

SECTION 28. Suspension of attorney by the Court of Appeals or a Court of First Instance. — The Court of Appeals or a Court of First Instance may suspend an attorney from practice for any of the causes named in the last preceding section, and after such suspension such attorney shall not practice his profession until further action of the Supreme Court in the premises.

SECTION 29. Upon suspension by Court of Appeals or Court of First Instance, further proceedings in Supreme Court. — Upon such suspension, the Court of Appeals or the Court of First Instance shall forthwith transmit to the Supreme Court a certified copy of the order or suspension and a full statement of the facts upon which the same was based. Upon the receipt of such certified copy and statement, the Supreme Court shall make full investigation of the facts involved and make such order revoking or extending the suspension, or removing the attorney from his office as such, as the facts warrant.

SECTION 30. Attorney to be heard before removal or suspension. — No attorney shall be removed or suspended from the practice of his profession, until he has had full opportunity upon reasonable notice to answer the charges against him, to produce witnesses in his own behalf, and to be heard by himself or counsel. But if upon reasonable notice he fails to appear and answer the accusation, the court may proceed to determine the matter ex parte.

SECTION 31. Attorneys for destitute litigants. — A court may assign an attorney to render professional aid free of charge to any party in a case, if upon investigation it appears that the party is destitute and unable to employ an attorney, and that the services of counsel are necessary to secure the ends of justice and to protect the rights of the party. It shall be the duty of the attorney so assigned to render the required service, unless he is excused therefrom by the court for sufficient cause shown.

SECTION 32. Compensation for attorneys de oficio. — Subject to availability of funds as may be provided by law the court may, in its

discretion, order an attorney employed as counsel de oficio to be compensated in such sum as the court may fix in accordance with section 24 of this rule. Whenever such compensation is allowed, it shall not be less than thirty pesos (P30.00) in any case, nor more than the following amounts: (1) Fifty pesos (P50.00) in light felonies; (2) One hundred pesos (P100.00) in less grave felonies; (3) Two hundred pesos (P200.00) in grave felonies other than capital offenses; (4) Five hundred pesos (P500.00) in capital offenses.

SECTION 33. Standing in court of persons authorized to appear for Government. — Any official or other person appointed or designated in accordance with law to appear for the Government of the Philippines shall have all the rights of a duly authorized member of the bar to appear in any case in which said government has an interest direct or indirect.

SECTION 34. By whom litigation conducted. — In the court of a justice of the peace a party may conduct his litigation in person, with the aid of an agent or friend appointed by him for that purpose, or with the aid of an attorney. In any other court, a party may conduct his litigation personally or by aid of an attorney, and his appearance must be either personal or by a duly authorized member of the bar.

SECTION 35. Certain attorneys not to practice. — No judge or other official or employee of the superior courts or of the Office of the Solicitor General, shall engage in private practice as a member of the bar or give professional advice to clients.

SECTION 36. Amicus curiae. — Experienced and impartial attorneys may be invited by the Court to appear as amici curiae to help in the disposition of issues submitted to it.

SECTION 37. Attorneys' liens. — An attorney shall have a lien upon the funds, documents and papers of his client which have lawfully come into his possession and may retain the same until his lawful fees and disbursements have been paid, and may apply such funds to the satisfaction thereof. He shall also have a lien to the same extent upon all judgments for the payment of money, and executions issued in pursuance of such judgments, which he has secured in a litigation of his client, from and after the time when he shall have

caused a statement of his claim of such lien to be entered upon the records of the court rendering such judgment, or issuing such execution, and shall have caused written notice thereof to be delivered to his client and to the adverse party; and he shall have the same right and power over such judgments and executions as his client would have to enforce his lien and secure the payment of his just fees and disbursements.

RULE 138-A
Law Student Practice Rule

SECTION 1. Conditions for student practice. — A law student who has successfully completed his 3rd year of the regular four-year prescribed law curriculum and is enrolled in a recognized law school's clinical legal education program approved by the Supreme Court, may appear without compensation in any civil, criminal or administrative case before any trial court, tribunal, board or officer, to represent indigent clients accepted by the legal clinic of the law school.

SECTION 2. Appearance. — The appearance of the law student authorized by this rule, shall be under the direct supervision and control of a member of the Integrated Bar of the Philippines duly accredited by the law school. Any and all pleadings, motions, briefs, memoranda or other papers to be filed, must be signed by the supervising attorney for and in behalf of the legal clinic.

SECTION 3. Privileged communications. — The Rules safeguarding privileged communications between attorney and client shall apply to similar communications made to or received by the law student, acting for the legal clinic.

SECTION 4. Standards of conduct and supervision. — The law student shall comply with the standards of professional conduct governing members of the Bar. Failure of an attorney to provide adequate supervision of student practice may be a ground for disciplinary action. *(Supreme Court Circular No. 19, dated December 19, 1986).*

RULE 139
Disbarment or Suspension of Attorneys

SECTION 1. Motion or complaint. — Proceedings for the removal or suspension of attorneys may be taken by the Supreme Court on its own motion or upon the complaint under oath of another in writing. The complaint shall set out distinctly, clearly, and concisely the facts complained of, supported by affidavits, if any, of persons having personal knowledge of the facts therein alleged and shall be accompanied with copies of such documents as may substantiate said facts.

SECTION 2. Service or dismissal. — If the complaint appears to merit action, a copy thereof shall be served upon the respondent, requiring him to answer the same within ten (10) days from the date of service. If the complaint does not merit action, or if the answer shows to the satisfaction of the Supreme Court that the complaint is not meritorious, the same shall be dismissed.

SECTION 3. Investigation by Solicitor General. — Upon the issues raised by the complaint and answer, or upon failure of the respondent to answer, the case shall be referred to the Solicitor General for investigation to determine if there is sufficient ground to proceed with the prosecution of the respondent. In the investigation conducted by the Solicitor General, the respondent shall be given full opportunity to defend himself, to produce witnesses in his own behalf, and to be heard by himself and counsel. However, if upon reasonable notice, the respondent fails to appear, the investigation shall proceed ex parte.

SECTION 4. Report of the Solicitor General. — Based upon the evidence adduced at the hearing, if the Solicitor General finds no sufficient ground to proceed against the respondent, he shall submit a report to the Supreme Court containing his findings of fact and conclusion, whereupon the respondent shall be exonerated unless the court orders differently.

SECTION 5. Complaint of the Solicitor General. Answer of respondent. — If the Solicitor General finds sufficient ground to proceed against the respondent, he shall file the corresponding

complaint, accompanied with all the evidence introduced in his investigation, with the Supreme Court, and the respondent shall be served by the clerk of the Supreme Court with a copy of the complaint with direction to answer the same within fifteen (15) days.

SECTION 6. Evidence produced before Solicitor General available. — The evidence produced before the Solicitor General in his investigation may be considered by the Supreme Court in the final decision of the case, if the respondent had an opportunity to object and cross-examine. If in the respondent's answer no statement is made as to any intention of introducing additional evidence, the case shall be set down for hearing, upon the filing of such answer or upon the expiration of the time to file the same.

SECTION 7. Commissioner to investigate and recommend. Rules of evidence. — Upon receipt of the respondent's answer, wherein a statement is made as to his desire to introduce additional evidence, the case shall be referred to a commissioner who, in the discretion of the court, may be the clerk of the Supreme Court, a judge of first instance, or an attorney-at-law for investigation, report, and recommendation. The Solicitor General or his representative shall appear before the commissioner to conduct the prosecution. The respondent shall be given full opportunity to defend himself, to produce additional evidence in his own behalf, and to be heard by himself and counsel. However, if upon reasonable notice the respondent fails to appear, the investigation shall proceed ex parte. The rules of evidence shall be applicable to proceedings of this nature.

SECTION 8. Report of commissioner and hearing. — Upon receipt of the report of the commissioner, copies of which shall be furnished the Solicitor General and the respondent, the case shall be set down for hearing before the court, following which the case shall be considered submitted to the court for its final determination.

SECTION 9. Procedure in Court of Appeals or Courts of First Instance. — As far as may be applicable, the procedure above outlined shall likewise govern the filing and investigation of complaints against attorneys in the Court of Appeals or in Courts of First Instance. In case of suspension of the respondent, the judge of the court of first instance or Justice of the Court of Appeals shall

forthwith transmit to the Supreme Court a certified copy of the order of suspension and a full statement of the facts upon which same is based.

SECTION 10. Confidential. — Proceedings against attorneys shall be private and confidential, except that the final order of the court shall be made public as in other cases coming before the court.

RULE 139-A
Integrated Bar of the Philippines
(Effective January 16, 1973)

SECTION 1. Organization. — There is hereby organized an official national body to be known as the Integrates Bar of the Philippines, composed of all persons whose names now appear or may hereafter be included in the Roll of Attorneys of the Supreme Court.

SECTION 2. Purpose. — The fundamental purposes of the Integrated bar shall be to elevate the standards of the legal profession, improve the administration of justice, and enable the Bar to discharge its public responsibility more effectively.

SECTION 3. Regions. — The Philippines is hereby divided into nine Regions of the Integrated Bar, to wit:

(a) Northern Luzon, consisting of the provinces of Abra, Batanes, Benguet, Cagayan, Ifugao, Ilocos Norte, Ilocos Sur, Isabela, Kalinga-Apayao, La Union, Mountain Province, Nueva Viscaya, and Quirino;

(b) Central Luzon, consisting of the provinces of Bataan, Nueva Ecija, Pampanga, Pangasinan, Tarlac, and Zambales;

(c) Greater Manila, consisting of the City of Manila, and Quezon City;

(d) Southern Luzon, consisting of the provinces of Batangas, Cavite, Laguna, Marinduque, Occidental Mindoro, Oriental Mindoro, Quezon and Rizal.

(f) Eastern Visayas, consisting of the provinces of Bohol, Cebu, Eastern Samar, Leyte, Northern Samar, Samar, and Southern Leyte;

(g) Western Visayas, consisting of the provinces of Aklan, Antique, Capiz, Iloilo, Negros Occidental, Negros Oriental, Palawan, Romblon, and Siquijor;

(h) Eastern Mindanao, consisting of the provinces of Agusan del Norte, Agusan del Sur, Bukidnon, Camiguin, Davao del Norte, Davao del Sur, Davao Oriental, Mindoro, Misamis Oriental, Surigao del Norte, and Surigao del Sur; and

(i) Western Mindanao, consisting of the cities of Basilan and Zamboanga, and the provinces of Cotabato, Lanao del Norte, Lanao del Sur, Misamis Occidental, South Cotabato, Sulu, Zamboanga del Norte, and Zamboanga del Sur.

In the event of the creation of any new province, the Board of Governors shall, with the approval of the Supreme Court, determine the Region to which the said province shall belong.

SECTION 4. Chapters. — A Chapter of the Integrated Bar shall be organized in every province. Except as hereinbelow provided, every city shall be considered part of the province within which it is geographically situated.

A separate Chapter shall be organized in each of the following political subdivisions or areas;

(a) The sub-province of Aurora;

(b) Each congressional district of the City of Manila;

(c) Quezon City;

(d) Caloocan City, Malabon and Navotas;

(e) Pasay City, Makati, Mandaluyong and San Juan del Monte;

(f) Cebu City; and

(g) Zamboanga City and Basilan City

Unless he otherwise registers his preference for a particular Chapter, a lawyer shall be considered a member of the Chapter of the province, city, political subdivision or area where his office or, in the absence thereof, his residence is located. In no case shall any lawyer be a member of more than one Chapter.

Each Chapter shall have its own local government as provided for by uniform rules to be prescribed by the Board of Governors and approved by the Supreme Court, the provisions of Section 19 of this rule notwithstanding.

Chapters belonging to the same Region shall hold regional conventions on matters and problems of common concern.

SECTION 5. House of Delegates. — The Integrated Bar shall have a House of Delegates of not more than one hundred twenty members who shall be apportioned among all the Chapters as nearly as may be according to the number of their respective members, but each Chapter shall have at least one Delegate. On or before December 31, 1974, and every four years thereafter, the Board of Governors shall make an apportionment of Delegates.

The term of the office of Delegates shall begin on the date of the opening of the annual convention of the House and shall end on the day immediately preceding the date of the opening of the next succeeding annual convention. No person may be a Delegate for more than two terms.

The House shall hold an annual convention at the call of the Board of Governors at any time during the month of April of each year for the election of Governors, the reading and discussion of reports including the annual report of the Board of Governors, the transaction of such other business as may be referred to it by the Board and the consideration of such additional matters as may be requested in writing by at least twenty Delegates. Special conventions of the House may be called by the Board of Governors to consider only such matters as the Board shall indicate. A majority of the Delegates who

have registered for a convention, whether annual or special, shall constitute a quorum to do business.

SECTION 6. Board of Governors. — The Integrated bar shall be governed by a Board of Governors. Nine Governors shall be elected by the House of Delegates from the nine Regions on the representation basis of one Governor from each Region. Each Governor shall be chosen from a list of nominees submitted by the Delegates from the Region, provided that not more than one nominee shall come from any Chapter. The President and the Executive Vice President, chosen by the Governors from outside of themselves as provided in Section 7 of this Rule, shall ipso facto become members of the Board.

The members of the Board shall hold office for a term of one year from the date of their election and until their successors shall have been duly elected and qualified. No person may be a Governor for more than two terms.

The Board shall meet regularly once every three months, on such date at such time and place as it shall designate. A majority of all the members of the Board shall constitute a quorum to do business. Special meetings may be called by the President or by five members of the Board.

Subject to the approval of the Supreme Court, the Board shall adopt By-Laws and promulgate Canons of Professional Responsibility for all the members of the Integrated Bar. The By-laws and the Canons may be amended by the Supreme Court motu propio or upon the recommendation of the Board of Governors.

The Board shall prescribe such other rules and regulations as may be necessary and proper to carry out the purposes of the Integrated bar as well as the provisions of this Rule.

SECTION 7. Officers. — The Integrated Bar shall have a President and an Executive Vice President who shall be chosen by the Governor immediately after the latter's election; either from among themselves or from other members of the Integrated Bar, by the vote of at least five Governors. Each of the regional members of the Board shall be ex officio Vice President for the Region which he represents.

The President and the Executive Vice President shall hold office for a term of one year from the date of their election and until their successors shall have duly qualified. The Executive Vice President shall automatically become the President for the next succeeding full term. The Presidency shall rotate from year to year among all the nine Regions in such order of rotation as the Board of Governors shall prescribe. No person shall be President or Executive Vice President of the Integrated Bar for more than one term.

The Integrated Bar shall have a Secretary, a Treasurer, and such other officers and employees as may be required by the Board of Governors, to be appointed by the President with the consent of the Board, and to hold office at the pleasure of the Board or for such term as it may fix. Said officers and employees need not be members of the Integrated Bar.

SECTION 8. Vacancies. — In the event the President is absent or unable to act, his duties shall be performed by the Executive Vice President; and in the event of the death, resignation, or removal of the President, the Executive Vice President shall serve as Acting President during the remainder of the term of the office thus vacated. In the event of the death, resignation, removal or disability of both the President and the Executive Vice President to hold office until the next succeeding election or during the period of disability.

The filing of vacancies in the House of Delegates, Board of Governors, and all other positions of Officers of the Integrated bar shall be as provided in the By-Laws. Whenever the term of an office or position is for a fixed period, the person chosen to fill a vacancy therein shall serve only for the unexpired term.

SECTION 9. Membership dues. — Every member of the Integrated Bar shall pay such annual dues as the Board of Governors shall determine with the approval of the Supreme Court. A fixed sum equivalent to ten percent (10%) of the collections from each Chapter shall set aside as a Welfare Fund for disabled members of the Chapter and the compulsory heirs of deceased members thereof.

SECTION 10. Effect of non-payment of dues. — Subject to the provisions of Section 12 of this Rule, default in the payment of annual dues for six months shall warrant suspension of membership in the Integrated Bar, and default in such payment for one year shall be a ground for the removal of the name of the delinquent member from the Roll of Attorneys.

SECTION 11. Voluntary termination of membership; reinstatement. — A member may terminate his membership by filing a written notice to that effect with the Secretary of the Integrated Bar, who shall immediately bring the matter to the attention of the Supreme Court. Forthwith he shall cease to be a member and his name shall be stricken by the Court from the Roll of Attorneys. Reinstatement may be made by the Court in accordance with rules and regulations prescribed by the Board of Governors and approved by the Court.

SECTION 12. Grievance procedures. — The Board of Governors shall provide in the By-Laws for grievance procedures for the enforcement and maintenance of discipline among all the members of the Integrated Bar, but no action involving the suspension or disbarment of a member or the removal of his name from the Roll of Attorneys shall be effective without the final approval of the Supreme Court.

SECTION 13. Non-Political Bar. — The Integrated Bar shall be strictly non-political, and every activity tending to impair this basic feature is strictly prohibited and shall be penalized accordingly. No lawyer holding an elective, judicial, quasi-judicial, or prosecutory office in the Government or any political subdivision or instrumentality thereof shall be eligible for election or appointment to any position in the Integrated Bar or any Chapter thereof. A Delegate, Governor, Officer or employee of the Integrated Bar, or an officer or employee of any Chapter thereof shall be considered ipso facto resigned from his position as of the moment he files his certificate of candidacy for any elective public office or accepts appointment to any judicial, quasi-judicial, or prosecutory office in the Government or any political subdivision or instrumentality thereof.

SECTION 14. Positions honorary. — Except as may be specifically authorized or allowed by the Supreme Court, no Delegate or Governor and no national or local Officer or committee member shall receive any compensation, allowance or emolument from the funds of the Integrated Bar for any service rendered therein or be entitled to reimbursement for any expense incurred in the discharge of his functions.

SECTION 15. Fiscal matters. — The Board of Governors shall administer the funds of the Integrated Bar and shall have the power to make appropriations and disbursements therefrom. It shall cause proper Books of Accounts to be kept and Financial Statements to be rendered and shall see to it that the proper audit is made of all accounts of the Integrated Bar and all the Chapters thereof.

SECTION 16. Journal. — The Board of Governors shall cause to be published a quarterly Journal of the Integrated Bar, free copies of which shall be distributed to every member of the Integrated Bar.

SECTION 17. Voluntary bar associations. —All voluntary Bar associations now existing or which may hereafter be formed may co-exist with the Integrated Bar but shall not operate at cross-purposes therewith.

SECTION 18. Amendments. — This Rule may be amended by the Supreme Court motu propio or upon the recommendation of the Board of Governors or any Chapter of the Integrated Bar.

SECTION 19. Organizational period. — The Commission on Bar Integration shall organize the local Chapters and toward this end shall secure the assistance of the Department of Justice and of all Judges throughout the Philippines. All Chapter organizational meetings shall be held on Saturday, February 17, 1973. In every case, the Commission shall cause proper notice of the date, time and place of the meeting to be served upon all the lawyers concerned at their addresses appearing in the records of the Commission. The lawyers present at the meeting called to organize a Chapter shall constitute a quorum for the purpose, including the election of a President, a Vice President, a Secretary, a Treasurer, and five Directors.

The Commission shall initially fix the number of Delegates and apportion the same among all the Chapters as nearly as may be in proportion to the number of their respective members, but each Chapter shall have at least one Delegate. The President of each Chapter shall concurrently be its Delegate to the House of Delegates. The Vice President shall be his alternate, except where the Chapter is entitled to have more than one Delegate. The Board of Directors of the Chapter shall in proper cases elect additional as well as alternate Delegates.

The House of Delegates shall convene in the City of Manila on Saturday, March 17, 1973 for the purpose of electing a Board of Governors. The Governors shall immediately assume office and forthwith meet to elect the Officers of the Integrated Bar. The Officers so chosen shall immediately assume their respective positions.

SECTION 20. Effectivity. — This Rule shall take effect on January 16, 1973.

Rule 139-A which ordained the integration of the Philippine Bar and the By-Laws of the Integrated Bar of the Philippines did not withdraw from the courts the authority to investigate and decide complaints against erring members of the Bar.

RULE 139-B
Disbarment and Discipline of Attorneys

SECTION 1. How Instituted. — Proceedings for the disbarment, suspension, or discipline of attorneys may be taken by the Supreme Court motu propio, or by the Integrated Bar of the Philippines (IBP) upon the verified complaint of any person. The complaint shall state clearly and concisely the facts complained of and shall be supported by affidavits of persons having personal knowledge of the facts therein alleged and/or by such documents as may substantiate said facts.

The IBP Board of Governors may, motu propio or upon referral by the Supreme Court or by a Chapter Board of Officers, or at the instance of any person, initiate and prosecute proper charges erring attorneys including those in the government service.

Six (6) copies of the verified complaint shall be filed with the Secretary of the IBP or the Secretary of any of its chapters who shall forthwith transmit the same to the IBP Board of Governors for assignment to an investigator.

A. Proceeding in the Integrated Bar of the Philippines

SECTION 2. National Grievance Investigators. — The Board of Governors shall appoint from among the IBP members an Investigator or, when special circumstances so warrant, a panel of three (3) investigators to investigate the complaint. All investigators shall take an oath of office in the form prescribed by the Board of Governors. A copy of the Investigator's appointment and oath shall be transmitted to the Supreme Court.

An Investigator may be disqualified by reason of relationship with the fourth degree of on sanguinity or affinity to any of the parties or their counsel, pecuniary interest, personal bias, or his having acted as counsel for either party, unless the parties sign and enter upon the record their written consent to his acting as such Investigator. Where the Investigator does not disqualify himself, a party may appeal to the IBP Board of Governors, which by majority vote of the members present, there being a quorum, may order his disqualification.

SECTION 3. Duties of the National Grievance Investigator. — The National Grievance Investigators shall investigate all complaints against members of the Integrated Bar referred to them by the IBP Board of Governors.

SECTION 4. Chapter assistance to complaint. —The proper IBP Chapter may assist the complainant[s] in the preparation and filing of his complaints.

SECTION 5. Service or dismissal. — If the complaint appears to be meritorious, the Investigator shall direct that a copy thereof be served upon the respondent, requiring him to answer the same within fifteen (15) days from the date of service. If the complaint does not merit action, or if the answer shows to the satisfaction of the Investigator that the complaint is not meritorious, the same may be

dismissed by the Board of Governors upon his recommendation. A copy of the resolution of dismissal shall be furnished the complainant and the Supreme Court which may review the case motu propio or upon timely appeal of the complainant filed within 15 days from notice of the dismissal of the complaint.

No investigation shall be interrupted or terminated by reason of the distance, settlement, compromise, restitution, withdrawal of the charges, or failure of the complaint to prosecute the same.

SECTION 6. Verification and service of answer. — The answer shall be verified. The original and five (5) legible copies of the answer shall be filed with the Investigator, with proof of service of a copy thereof on the complaint or his counsel.

SECTION 7. Administrative counsel. — The IBP Board of Governors shall appoint a suitable member of the Integrated Bar as counsel to assist the complainant or the respondent during the investigation in case of need for such assistance.

SECTION 8. Investigation. — Upon joinder of issues or upon failure of the respondent to answer, the Investigator shall, with deliberate speed, proceed with the investigation of the case. He shall have the power to issue subpoenas and administer oaths. The respondent shall be given full opportunity to defend himself, to present witnesses on his behalf, and be heard by himself and counsel. However, if upon reasonable notice, the respondent fails to appear, the investigation shall proceed ex parte.

The Investigator shall terminate the investigation within three(3) months from the date of its commencement, unless extended for good cause by the Board of Governors upon prior application.

Willful failure or refusal to obey a subpoena or any other lawful order issued by the Investigator shall be dealt with as for indirect contempt of court. The corresponding charge shall be filed by the Investigator before the IBP Board of Governors which shall require the alleged contemnor to show cause within ten (10) days from notice. The IBP Board of Governors may thereafter conduct hearings, if necessary, in accordance with the procedure set forth in the Rule for hearings

before the Investigator. Such hearing shall as far as practicable be terminated within fifteen (15) days from its commencement. Thereafter, the IBP Board of Governors shall within a like period of fifteen (15) days issue a resolution setting forth its findings and recommendation, which shall forthwith be transmitted to the Supreme Court for final action and if warranted, the imposition of penalty.

SECTION 9. Depositions. — Depositions may be taken in accordance with Rules of Court with leave of the Investigators.

With the Philippines, depositions may be taken before any member of the Board of Governors, the President of any Chapter, or any officer authorized by law to administer oaths.

Depositions may be taken outside the Philippines before a diplomatic or consular representative of the Philippine Government or before any person agreed upon by the parties or designated by the Board of Governors.

Any suitable member of the Integrated Bar in the place where a deposition shall betaken may be designated by the Investigator to assist the complainant or the respondent in taking a deposition.

SECTION 10. Report of Investigator. —Not later than thirty (30) days from the termination of the investigation, the Investigator shall submit a report containing his findings of fact and recommendations to the IBP Board of Governors, together with the stenographic notes and the transcript thereof, and all the evidence presented during the investigation. The submission of the report need not await the transcription of the stenographic notes, it being sufficient that the report reproduce substantially from the Investigator's personal notes any relevant and pertinent testimonies.

SECTION 11. Defects. — No defect in a complaint, notice, answer, or in the proceeding or the Investigator's Report shall be considered as substantial unless the Board of Governors, upon considering the whole record, finds that such defect has resulted or may result in a miscarriage of justice, in which event the Board shall take remedial

action as the circumstances may warrant, including invalidation of the entire proceedings.

SECTION 12. Review and decision by the Board of Governors. — (a) Every case heard by an investigator shall be reviewed by the IBP Board of Governors upon the record and evidence transmitted to it by the Investigator with his report. The decision of the Board upon such review shall be in writing and shall clearly and distinctly state the facts and the reasons on which it is based. It shall be promulgated within a period not exceeding thirty (30) days from the next meeting of the Board following the submittal of the Investigator's report.

(b) If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.

(c) If the respondent is exonerated by the Board of the disciplinary sanction imposed by it is less than suspension or disbarment (such as admonition, reprimand, or fine) it shall issue a decision exonerating respondent or imposing such sanction. The case shall be deemed terminated unless upon petition of the complainant or other interested party filed with the Supreme Court within fifteen (15) days from notice of the Board's resolution, the Supreme Court orders otherwise.

(d) Notice of the resolution or decision of the Board shall be given to all parties through their counsel. A copy of the same shall be transmitted to the Supreme Court.

B. Proceedings in the Supreme Court

SECTION 13. Investigation by Solicitor General. — In proceedings initiated motu propio by the Supreme Court or in other proceedings when the interest of justice so requires, the Supreme Court may refer the case for investigation to the Solicitor General or to any officer of the Supreme Court or judge of a lower court, in which case the investigation shall proceed in the same manner provided in Sections

6 to 11 hereof, save that the review of the report of investigation shall be conducted directly by the Supreme Court.

SECTION 14. Report of the Solicitor General or other Court designated Investigator. — Based upon the evidence adduced at the investigation, the Solicitor General or other Investigator designated by the Supreme Court shall submit to the Supreme Court a report containing his findings of fact and recommendations together with the record and all the evidence presented in the investigation for the final action of the Supreme Court.

C. Common Provisions

SECTION 15. Suspension of attorney by Supreme Court. — After receipt of respondent's answer or lapse of the period therefor, the Supreme Court, motu propio, or at the instance of the IBP Board of Governors upon the recommendation of the Investigators, may suspend an attorney from the practice of his profession for any of the cause specified in Rule 138, Section 27, during the pendency of the investigation until such suspension is lifted by the Supreme Court.

SECTION 16. Suspension of attorney by the Court of Appeals or a Regional Trial Court. — The Court of Appeals or Regional Trial Court may suspend an attorney from practice for any of the causes named in Rule 138, Section 27, until further action of the Supreme Court in the case.

SECTION 17. Upon suspension by Court of Appeals or Regional Trial Court, further proceedings in Supreme Court. — Upon such suspension, the Court of Appeals or a Regional Trial Court shall forthwith transmit to the Supreme Court a certified copy of the order of suspension and a full statement of the facts upon which the same was based. Upon receipt of such certified copy and statement, the Supreme Court shall make a full investigation of the case and may revoke, shorten or extend the suspension, or disbar the attorney as the facts may warrant.

SECTION 18. Confidentiality. — Proceedings against attorneys shall be private and confidential. However, the final order of the Supreme Court shall be published like its decisions in other cases.

SECTION 19. Expenses. — All reasonable and necessary expenses incurred in relation to disciplinary and disbarment proceedings are lawful charges for which the parties may be taxed as costs.

SECTION 20. Effectivity and Transitory Provision. — This Rule shall take effect on June 1, 1988. All cases pending investigation by the Office of the Solicitor General shall be transferred to the Integrated Bar of the Philippines Board of Governors for investigation and disposition as provided in this Rule except those cases where the investigation has been substantially completed.

RULE 140
Charges Against Judges of First Instance

SECTION 1. Complaint. — All charges against judges of first instance shall be in writing and shall set out distinctly, clearly, and concisely the facts complained of as constituting the alleged serious misconduct or inefficiency of the respondent, and shall be sworn to and supported by affidavits of persons who have personal knowledge of the facts therein alleged, and shall be accompanied with copies of documents which may substantiate said facts.

SECTION 2. Service or dismissal. — If the charges appear to merit action, a copy thereof shall be served upon the respondent, requiring him to answer within ten (10) days from the date of service. If the charges do not merit action, or if the answer shows to the satisfaction of the court that the charges are not meritorious, the same shall be dismissed.

SECTION 3. Answer; hearing. — Upon the filing of respondent's answer, or upon the expiration of the time for its filing, the court shall assign one of its members, a Justice of the Court of Appeals or a judge of first instance to conduct the hearing of the charges. The Justice or judge so assigned shall set a day for the hearing, and notice thereof shall be served on both parties. At such hearing the parties may present oral or written evidence.

SECTION 4. Report. — After the hearing, the Justice or judge shall file with the Supreme Court a report of his findings of fact and

conclusions of law, accompanied by the evidence presented by the parties and the other parties in the case.

SECTION 5. Action. — After the filing of the report, the court will take such action as the facts and the law may warrant.

SECTION 6. Confidential. — Proceedings against judges of first instance shall be private and confidential.

RULE 141
Legal Fees

(A.M. No. 00-2-01-SC, March 1, 2000)

RESOLUTION AMENDING RULE 141 (LEGAL FEES) OF THE RULES OF COURT

Pursuant to the resolution of the Court of 14 September 1999 in A.M. No. 99-8-01-SC, Rule 141 of the Rules of Court is hereby further amended to read as follows:

SECTION 1. Payment of fees. — Upon the filing of the pleading or other application which initiates an action or proceeding, the fees prescribed therefor shall be paid in full. (n)

SECTION 2. Fees in lien. — Where the court in its final judgment awards a claim not alleged, or a relief different from, or more than that claimed in the pleading, the party concerned shall pay the additional fees which shall constitute a lien on the judgment in satisfaction of said lien. The clerk of court shall assess and collect the corresponding fees. (n)

SECTION 3. Person authorized to collect legal fees. — Except as otherwise provided in this rule, the officers and persons hereinafter mentioned, together with their assistants and deputies, may demand, receive, and take the several fees hereinafter mentioned and allowed for any business by them respectively done by virtue of their several offices, and no more. All fees so collected shall be forthwith remitted to the Supreme Court. The fees collected shall accrue to the general fund. However, all increases in the legal fees prescribed in amendments to this rule as well as new legal fees prescribed herein shall pertain to the Judiciary Development Fund as established by law. The persons herein authorized to collect legal fees be accountable officers and shall be required to post bond in such amount as prescribed by law. (1a)

SECTION 4. Clerks of the Court of Appeals and of the Supreme Court. — (a) For filing an action, proceeding, appeal by notice or record on appeal when acquired, entering appearance of the parties, entering orders of the court, filing and docketing all motions, docketing of case on all proper dockets, and indexing the same, entering, recording and certification of judgment and remanding of records to the lower court, taxing the costs, administering all necessary oaths or affirmations in the action or proceeding, recording the opinion of the court, and issuing all necessary process in the action or proceeding not herein otherwise provided for, each action or special proceeding, five hundred (P500.00) pesos;

(b) For the performance of marriage ceremony, including issuance of certificate of marriage, three hundred (P300.00) pesos;

(c) For furnishing transcripts of the record or copies of any record, judgment, or entry of which any person is entitled to demand and receive a copy, for each page, four (P4.00) pesos;

(d) For each certificate not on process, thirty (P30.00) pesos;

(e) For every search for anything above a year's standing and reading the same, fifteen (P15.00) pesos;

(f) For a commission on all money coming into his hands by these rules or order of the court and caring for the same, two and one-half (2.5%) percent on all sums not exceeding four thousand (P4,000.00) pesos and one and one-half (1.5%) percent upon all sums in excess of four thousand (P4,000.00) pesos, and one (1%) per cent on all sums in excess of forty thousand (P40,000.00) pesos. (4a)

SECTION 5. Fees to be paid by the advancing party. — The fees of the clerk of the Court of Appeals or of the Supreme Court shall be paid him at the time of the entry of the action or proceeding in the court by the party who enters the same appeal, or otherwise, and the clerk shall in all cases give a receipt for the same and shall enter the amount received upon his book, specifying the date when received, person from whom received, name of action in which received, and amount received. If the fees are not paid, the court may refuse to

proceed with the action until they are paid and may dismiss the appeal or the action or proceeding. (3a)

SECTION 6. Fees of bar candidates. —

(a) For filing the application for admission to the bar, whether admitted to the examination or not, one thousand and seven hundred fifty (P1,750.00) pesos for new applicants, and for repeaters, plus the additional amount of two (2) hundred (P200.00) pesos multiplied by the number of times the applicant has failed in the bar examinations;

(b) For admissions to the bar, including oath taking, signing of the roll of attorneys, the issuance of diploma of admission to the Philippine Bar, one thousand and seven hundred fifty (P1,750.00) pesos;

(c) Other Bar Fees. — For the issuance of:

1.	Certification of admission to the Philippine Bar	P50.00
2.	Certificate of good standing (local)	50.00
3.	Certificate of good standing (foreign)	100.00
4.	Verification of membership in the bar	50.00
5.	Certificate of grades in the bar examinations	50.00
6.	Other certification of records at the Bar Office, per page	15.00
7.	A duplicate diploma of admission to the Philippine Bar	500.00

For services in connection with the return of examination notebooks to examinees, a fee of thirty (P30.00) pesos shall also be charged. (6a)

SECTION 7. Clerks of Regional Trial Courts. —
(a) For filing an action or a permissive counterclaim or money claim against an estate not based on judgment, or for filing with leave

of court a third party, fourth-party, etc. complaint, or a complaint in intervention, and for all clerical services in the same, if the total sum claimed, exclusive of interest, or the stated value of the property in litigation, is:

1.	Less than P100,000.00	P500.00
2.	P100,000.00 or more but less than P150,000.00	800.00
3.	P150,000.00 or more but less than P200,000.00	1,000.00
4.	P200,000.00 or more but less than P250,000.00	1,500.00
5.	P250,000.00 or more but less than P300,000.00	1,750.00
6.	P300,000.00 or more but not more than P350,000.00	2,000.00
7.	P350,000.00 or more but not more than P400,000.00	2,250.00
8.	For each P1,000.00 in excess of P400,000.00	10.00

(b) For filing:

1.	Actions where the value of the subject matter cannot be estimated	P600.00
2.	Special civil actions except judicial foreclosure of mortgage which shall be governed by paragraph (a) above	600.00
3.	All other actions not involving property	600.00

In a real action, the assessed value of the property, or if there is none, the estimated value thereof shall be alleged by the claimant and shall be the basis in computing the fees.

(c) For filing requests for extra-judicial foreclosure of real estate or chattel mortgage, if the amount of the indebtedness, or the mortgagee's claim is:

1.	Less than P50,000.00	P275.00
2.	P50,000.00 or more but less than P100,000.00	400.00
3.	P100,000.00 or more but less than P150,000.00	500.00
4.	P150,000.00 or more but less than P200,000.00	650.00
5.	P200,000.00 or more but less than P250,000.00	1,000.00
6.	P250,000.00 or more but less than P300,000.00	1,250.00
7.	P300,000.00 or more but less than P400,000.00	1,500.00
8.	P400,000.00 or more but less than P500,000.00	1,750.00
9.	P500,000.00 or more but not more than P1,000,000.00	2,000.00
10.	For each P1,000.00 in excess of P1,000,000.00	10.00

(d) For initiating proceedings for the allowance of wills, granting letters of administration, appointment of guardians, trustees, and other special proceedings, the fees payable shall be collected in

accordance with the value of the property involved in the proceedings, which must be stated in the application or petition, as follows:

1.	More than P100,000.00 but less than P150,000.00	P2,000.00
2.	P150,000.00 or more but less than P200,000.00	2,250.00
3.	P200,000.00 or more but less than P250,000.00	2,500.00
4.	P250,000.00 or more but less than P300,000.00	2,750.00
5.	P300,000.00 or more but less than P350,000.00	3,000.00
6.	P350,000.00 or more but not more than P400,000.00	3,250.00
7.	For each P1,000.00 in excess of P400,000.00	10.00

If the value of the estate as definitely appraised by the court is more than the value declared in the application, the difference of fee shall be paid: provided that a certificate from the clerk of court that the proper fees have been paid shall be required prior to the closure of the proceedings.

(e) For filing petitions for naturalization or other modes of acquisition of citizenship, two thousand (P2,000.00) pesos;

(f) For filing petitions for adoption, support, annulment of marriage, legal separation and other actions or proceedings under the Family Code, two hundred (P200.00) pesos;

If the proceedings involve separation of property, an additional fee corresponding to the value of the property involved shall be collected, computed in accordance with the rates for special proceedings.

(g) For all other special proceedings not concerning property, two hundred (P200.00) pesos;

(h) For the performance of marriage ceremony including issuance of certificate of marriage, three hundred (P300.00) pesos;

(i) For filing an application for commission as notary public, five hundred (P500.00) pesos;

(j) For certified copies of any paper, record, decree, judgment or entry thereof for each page, four (P4.00) and fifteen (P15.00) pesos for certification;

(k) For a commission on all money coming into the clerks' hands by law, rule, order or writ of court and caring for the same, one and one-half (1.5%) per centum on all sums not exceeding forty thousand (P40,000.00) pesos; and one (1%) per centum on all sums in excess of forty thousand (P40,000) pesos.

(l) For any other services as clerk not provided in this section, one hundred and fifty (P150.00) pesos shall be collected. (7a)

SECTION 8. Clerks of Courts of the First Level. —

(a) For each civil action or proceeding, where the value of the subject matter involved, or the amount of the demand, inclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs is:

1.	Not more than P20,000.00	P150.00
2.	More than P20,000.00 but not more than P100,000.00	500.00
3.	More than P100,000.00 but not more than P200,000.00	1,250.00
4.	More than P200,000.00 but not more than P300,000.00	1,750.00

5. More than P300,000.00 but not more than P400,000.00 — 2,500.00

In a real action, other than for forcible entry and unlawful detainer, the assessed value of the property or if not declared for taxation purposes, the assessed value of the adjacent lots, or if there is none, the estimated value thereof shall be alleged by the claimant and shall be the basis in computing the fees.

(b) For initiating proceedings for the allowance of wills, granting of letters of administration and settlement of estates of small value, where the value of the estate is:

1. Not more than P20,000.00 — P250.00

2. More than P20,000.00 but not more than P100,000.00 — 1,350.00

3. More than P100,000.00 but not more than P200,000.00 — 2,000.00

4. For each proceeding other than the allowance of wills (probate), granting of letters of administration, settlement of estate of small value, two hundred (P200.00) pesos;

(c) For forcible entry and unlawful detainer cases, one hundred and fifty (P150.00) pesos;

(d) For appeals in all actions or proceedings, including forcible entry and detainer cases, taken from courts of first level, two hundred (P200.00) pesos;

(e) For the performance of marriage ceremony, including issuance of certificate of marriage, three hundred (P300.00) pesos;

(f) For taking affidavit, twenty-five (P25.00) pesos;

(g) For taking acknowledgment, thirty (P30.00) pesos;

(h) For taking and certifying depositions, including oath, per page, eight (P8.00) pesos;

(i) For certified copies of any record, per page, ten (P10.00) pesos;

(j) For stamping and registering books as required by articles nineteen and thirty-six of the Code of Commerce, each book, thirty (P30.00) pesos;

(k) For performing notarial acts for which fees are not specifically fixed in this section, the same fees which notaries public are entitled to receive. (8a)

SECTION 9. Sheriffs and other persons serving processes. —

(a) For serving summons and copy of complaint, for each defendant, sixty (P60.00) pesos;

(b) For serving subpoenas in civil action or proceeding, for each witness to be served, twenty-four (P24.00) pesos;

(c) For executing a writ of attachment against the property of defendant, sixty (P60.00) pesos;

(d) For serving a temporary restraining order, or writ of injunction, preliminary or final, of any court, sixty (P60.00) pesos;

(e) For executing a writ of replevin, sixty (P60.00) pesos;

(f) For filing bonds or other instruments of indemnity or security in provisional remedies, for each bond or instrument, fifty (P50.00) pesos;

(g) For executing a writ or process to place a party in possession of real estates one hundred and fifty (P150.00) pesos;

(h) For advertising a sale, besides cost of publication, seventy-five (P75.00) pesos;

(i) For taking inventory of goods levied upon when the inventory is ordered by the court, one hundred and fifty (P150.00) pesos per day of actual inventory work;

(j) For levying on execution on personal or real property, seventy-five (P75.00) pesos;

(k) For issuing a notice of garnishment, for each notice, thirty pesos (30.00) pesos;

(l) For money collected by him by order, execution, attachment, or any other process, judicial or extra-judicial, the following sums, to wit:

1. On the first four thousand (P4,000.00) pesos, five (5%) per centum;

2. On all sums in excess of four thousand (P4,000.00) pesos, two and one-half (2.5%) per centum.

In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriff's expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each the kilometer of travel, guards' fees, warehousing and similar charges, in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and ex officio sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor. (9a)

SECTION 10. Stenographers. — Stenographers shall give certified transcript of notes taken by them to every person requesting the same upon payment of (a) six (P6.00) pesos for each page of not less than two hundred and fifty words before the appeal is taken and (b) three

pesos and sixty centavos (P3.60) for the same page, after the filing of the appeal, provided, however, that one-third of the total charges shall be paid to the court and the remaining two-thirds to the stenographer concerned. (10a)

SECTION 11. Notaries. — No notary public shall charge or receive for any service rendered by him any fee, remuneration or compensation in excess of those expressly prescribed in the following schedule:

(a) For protests of drafts, bills of exchange, or promissory notes for non-acceptance or non-payment, and for notice thereof, thirty-six (P36.00) pesos;

(b) For the registration of such protest and filing or safekeeping of the same, thirty-six (P36.00) pesos;

(c) For authenticating powers of attorney, thirty-six (P36.00) pesos;

(d) For sworn statement concerning correctness of any account or other document, thirty-six (P36.00) pesos;

(e) For each oath of affirmation, thirty-six (P36.00) pesos;

(f) For receiving evidence of indebtedness to be sent outside, thirty-six (P36.00) pesos;

(g) For issuing a certified copy of all or part of his notarial register or notarial records, for each page, thirty-six (P36.00) pesos;

(h) For taking depositions, for each page, thirty-six (P36.00) pesos; and

(i) For acknowledging other documents not enumerated in this section, thirty-six (P36.00) pesos. (11a)

SECTION 12. Other officers taking depositions — Other officers taking depositions shall receive the same compensation as above provided for notaries public for taking and certifying depositions: (10)

SECTION 13. Witness fees. — (a) Witnesses in the Supreme Court, in the Court of Appeals and in the Regional Trial Courts, either in actions or special proceedings, shall be entitled to one hundred (P100.00) pesos per day inclusive of travel time;

(b) Witnesses before courts of the first level shall be allowed fifty (P50.00) pesos per day;

(c) Fees to which witnesses may be entitled in a civil action shall be allowed, on the certification of the clerk court or judge of his appearance in the case. A witness shall not be allowed compensation for his attendance in more than one case or more than one side of the same case at the same time, but may elect in which of several cases or on which side of a case, when he summoned by both sides, to claim his attendance. A person who is compelled to attend court on other business shall not be paid as witness. (11a)

SECTION 14. Fees of appraisers. — Appraisers appointed to appraise the estate of a ward or of a deceased person shall each receive a compensation of two hundred (P200.00) pesos per day for the time actually and necessarily employed in the performance of their duties and in making their report to the court, which fees in each instance, shall be paid out of the state of the ward or deceased person, as the case may be. Any actual and necessary traveling expenses incurred in the performance of their duties of such appraiser may likewise be allowed and paid out of the estate. (13a)

SECTION 15. Fees of commissioners in eminent domain proceedings. — The commissioners appointed to appraise land sought to be condemned for public uses in accordance with these rules shall each receive a compensation of two hundred (P200.00) pesos per day for the time actually and necessarily employed in the performance of their duties and in making their report to the court, which fees shall be taxed as a part of the costs of the proceedings. (13a)

SECTION 16. Fees of commissioners in proceedings for partition of real estate. — The commissioners appointed to make partition of real estate shall each receive a compensation of two hundred (P200.00) pesos per day for the time actually and necessarily

employed in the performance of their duties and in making their report to the court, which fees shall be taxed as a part of the costs of the proceedings. (14a)

SECTION 17. Fees, and the account thereof . — The clerk, under the direction of the judge, shall keep a book in which shall be entered the items of fees which have accrued for the transaction of businesses covered by the provisions of this rule, for which fees are payable, specifying for what business each time of fees has accrued. Receipts shall be given for all fees received and they shall be accounted for in the manner provided in relation to the fees of the clerk of court in inspection of auditing officer and other interested therein. (15)

SECTION 18. Indigent-litigants exempt from payment of legal fees. — Indigent litigants (a) whose gross income and that of their immediate family do not exceed four thousand (P4,000.00) pesos a month if residing in Metro Manila, and three thousand (P3,000.00) pesos a month if residing outside Metro Manila, and (b) who do not own real property with an assessed value of more than fifty thousand (P50,000.00) pesos shall be exempt from the payment of legal fees.

The legal fees shall be a lien on any judgment rendered in the case favorably to the indigent litigant, unless the court otherwise provides.

To be entitled to the exemption herein provided, the litigant shall execute an affidavit that he and his immediate family do not earn a gross income abovementioned, nor they own any real property with the assessed value aforementioned, supported by an affidavit of a disinterested person attesting to the truth of the litigant's affidavit.

Any falsity in the affidavit of a litigant or disinterested person shall be sufficient cause to strike out the pleading of that party, without prejudice to whatever criminal liability may have been incurred. (16a)

SECTION 19. In addition to the fees imposed in the preceding sections, a victim-compensation fee of five (P5.00) pesos pursuant to Rep. Act. No. 7309 shall be assessed and collected for the filing of every complaint or petition initiating an ordinary civil action, special civil action or special; proceeding in the trial courts including civil actions impliedly instituted with criminal actions under Rule 111,

Revised Rules of Criminal Procedure where a filing fee is likewise collected. All sums collected shall be remitted to the Department of Justice every quarter by the Clerk of Court concerned. (18-A)

SECTION 20. Other fees. — The following fees shall also be collected by the clerks of Regional Trial Courts or courts of the first level, as the case may be:

(a) In estafa cases where the offended party fails to manifest within fifteen (15) days following the filing of the information that the civil liability arising from the crime has been or would be separately prosecuted:

1.	Less than P100,000.00	P500.00
2.	P100,000.00 or more but less than P150,000.00	800.00
3.	P150,000.00 or more but less than P200,000.00	1,000.00
4.	P200,000.00 or more but less than P250,000.00	1,500.00
5.	P250,000.00 or more but less than P300,000.00	1,750.00
6.	P300,000.00 or more but less than P350,000.00	2,000.00
7.	P350,000.00 or more but not more than P400,000.00	2,250.00
8.	For each P1,000.00 in excess of P400,000.00	10.00

(b) For motions for postponement after completion of the pre-trial stage, one hundred pesos (P100.00) for the first, and an additional fifty pesos (P50.00) for every postponement thereafter based on that for the immediately preceding motion: Provided, however, that no fee

shall be imposed when the motion is found to be based on justifiable and compelling reason;

(c) For bonds by sureties in criminal and civil cases, three hundred pesos (P300.00);

(d) For applications for and entries of certificates of sale and final deeds of sale in extra-judicial foreclosures of mortgages, three hundred (P300.00) pesos;

(e) For applications for and certificates of sale in notarial foreclosures:

1. On the first four thousand (P4,000) pesos, five (5%) per cent;

2. On all sums in excess of four thousand (P4,000) pesos, two and one-half (2.5%) per cent. (A.M. No. 99-8-01-SC, September 14, 1999)

SECTION 21. Government exempt. — The Republic of the Philippines, its agencies and instrumentalities, are exempt from paying the legal fees provided in this rule. Local governments and government-owned or controlled corporations with or without independent charters are not exempt from paying such fees. (19)

This Resolution shall take effect on the 1st day of March, 2000, and shall be published in two (2) newspapers of general circulation not later than the 15th of February 2000.

RULE 142
Costs

SECTION 1. Costs ordinarily follow results of suit. — Unless otherwise provided in these rules, costs shall be allowed to the prevailing party as a matter of course, but the court shall have power, for special reasons, to adjudge that either party shall pay the costs of an action, or that the same be divided, as may be equitable. No costs shall be allowed against the Republic of the Philippines unless otherwise provided by law.

SECTION 2. When action or appeal dismissed. — If an action or appeal is dismissed for want of jurisdiction or otherwise, the court

nevertheless shall have the power to render judgment for costs, as justice may require.

SECTION 3. Costs when appeal frivolous. — Where an action or an appeal is found to be frivolous, double, or treble costs may be imposed on the plaintiff or appellant, which shall be paid by his attorney, if so ordered by the court.

SECTION 4. False allegations. — An averment in a pleading made without reasonable cause and found untrue shall subject the offending party to the payment of such reasonable expenses as may have been necessarily incurred by the other party by reason of such untrue pleading. The amount of expenses so payable shall be fixed by the judge in the trial, and taxed as costs.

SECTION 5. No costs for irrelevant matters. — When the record contains any unnecessary, irrelevant, or immaterial matter, the party at whose instance the same was inserted or at whose instance the same was printed, shall not be allowed as costs any disbursement of preparing, certifying, or printing such matter.

SECTION 6. Attorney's fees as cost. — No attorney's fees shall be taxed as costs against the adverse party, except as provided by the rules of civil law. But this section shall have no relation to the fees to be charged by an attorney as against his client.

SECTION 7. Restriction of costs. — If the plaintiff in any action shall recover a sum not exceeding ten pesos as debt or damages, he shall recover no more costs than debt or damages, unless the court shall certify that the action involved a substantial and important right to the plaintiff in which case full costs may be allowed.

SECTION 8. Costs, how taxed. — In inferior courts, the costs shall be taxed by the justice of the peace or municipal judge and included in the judgment. In superior courts, costs shall be taxed by the clerk of the corresponding court on five day's written notice given by the prevailing party to the adverse party. With this notice shall be served a statement of the items of costs claimed by the prevailing party, verified by his oath or that of his attorney. Objections to the taxation shall be made in writing, specifying the items objected to.

Either party may appeal to the court from the clerk's taxation. The costs shall be inserted in the judgment if taxed before its entry, and payment thereof shall be enforced by execution.

SECTION 9. Costs in justice of the peace or municipal courts. — In an action or proceeding pending before a justice of the peace or municipal judge, the prevailing party may recover the following costs, and no other:

(a) For the complaint or answer, two pesos;

(b) For the attendance of himself, or his counsel, or both, on the day of trial, five pesos;

(c) For each additional day's attendance required in the actual trial of the case, one peso;

(d) For each witness produced by him, for each day's necessary attendance at the trial, one peso, and his lawful traveling fees;

(e) For each deposition lawfully taken by him and produced in evidence, five pesos;

(f) For original documents, deeds, or papers of any kind produced by him, nothing;

(g) For official copies of such documents, deeds or papers, the lawful fees necessarily paid for obtaining such copies;

(h) The lawful fees charged by him for service of the summons and other process in the action;

(i) The lawful fees charged against him by the judge of the court in entering and docketing and trying the action or proceeding.

SECTION 10. Costs in Courts of First Instances. — In an action or proceeding pending in a Court of First Instance, the prevailing party may recover the following costs, and no other:

(a) For the complaint or answer, fifteen pesos;

(b) For his own attendance, and that of his attorney, down to and including final judgment, twenty pesos;

(c) For each witness necessarily produced by him, for each day's necessary attendance of such witness at the trial, two pesos, and his lawful traveling fees;

(d) For each deposition lawfully taken by him, and produced in evidence, five pesos;

(e) For original documents, deeds, or papers of any kind produced by him, nothing;

(f) For official copies of such documents, deeds, or papers, the lawful fees necessarily paid for obtaining such copies;

(g) The lawful fees paid by him in entering and docketing the action or recording the proceedings, for the service of any process in action, and all lawful clerk's fees paid by him.

SECTION 11. Costs in Court of Appeals and in Supreme Court. — In an action or proceeding pending in the Court of Appeals or in the Supreme Court, the prevailing party may recover the following costs, and no other:

(a) For his own attendance, and that of his attorney, down to and including final judgment, thirty pesos in the Court of Appeals and fifty pesos in the Supreme Court;

(b) For official copies of record on appeal and the printing thereof, and all other copies required by the rules of court, the sum actually paid for the same;

(c) All lawful fees charged against him by the clerk of the Court of Appeals or of the Supreme Court, in entering and docketing the action and recording the proceedings and judgment therein and for the issuing of all process;

(d) No allowance shall be made to the prevailing party in the Supreme Court or Court of Appeals for the brief or written or printed arguments of his attorney, or copies thereof, aside from the thirty or fifty pesos above stated;

(e) If testimony is received in the Supreme Court or Court of Appeals not taken in another court and transmitted thereto, the prevailing party shall be allowed the same costs for witness fees, depositions, and process and service thereof as he would have been allowed for such items had the testimony been introduced in a Court of First Instance;

(f) The lawful fees of a commissioner in an action may also be taxed against the defeated party, or apportioned as justice requires.

SECTION 12. Costs when witness fails to appear. — If a witness fails to appear at the time and place specified in the subpoena issued by any inferior court, the costs of the warrant of arrest and of the arrest of the witness shall be paid by the witness if the court shall determine that his failure to answer the subpoena was willful or without just excuse.

SECTION 13. Costs when person cited for examination in probate proceedings. — When a person is cited, on motion of another, to appear before the court to be examined in probate proceedings, the court may, in its discretion, tax costs for the person so cited and issue execution therefor, allowing the same fees as for witnesses in Courts of First Instance.

RULE 143
Applicability of the Rules

These rules shall not apply to land registration, cadastral and election cases, naturalization and insolvency proceedings, and other cases not herein provided for, except by analogy or in a suppletory character and whenever practicable and convenient.

RULE 144
Effectiveness

These rules shall take effect on January 1, 1964. They shall govern all cases brought after they take effect, and also all further proceedings in cases then pending, except to the extent that in the opinion of the court their application would not be feasible or would work injustice, in which event the former procedure shall apply.
