NEW RULES OF PROCEDURE OF THE SECURITIES AND EXCHANGE COMMISSION

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Pursuant to Presidential Decree No. 902-A, as amended, and other related laws in the interest of just, speedy and inexpensive determination of disputes and claims, the Commission hereby promulgates the following new rules of procedure to govern actions and proceedings before it, in the exercise of its adjudicative functions.

SECTION 1. Title. — These Rules shall be known as the New Rules of Procedure of the Securities and Exchange Commission.

SEC. 2. Definitions. — For purposes of these Rules the following terms shall mean:

a. Commission — the Securities and Exchange Commission.

b. Commissioner — the Chairman or any of the Associate Commissioners.

c. Hearing Officer —any Commissioner, officer, body or panel duly designated or created by the Commission to hear and decide a particular case.

d. Order — any directive, other than a judgment, of a Hearing Officer.

e. Corporation — also refers to a partnership or an association registered with the Commission.

SEC. 3. Construction. — These rules shall be liberally construed in order to promote public interest and to assist the parties in obtaining just, speedy and inexpensive determination of every action or claim brought before the Commission.

SEC. 4. Nature of Proceedings. — Subject to the requirements of due process, proceedings before the Commission shall be summary in nature not necessarily adhering to or following the technical rules of evidence obtaining in the regular courts. Provided however, that the Rules of Court may apply in a suppletory manner whenever practicable.

SEC. 5. Venue of Hearings. — All actions or claims brought under these Rules shall be commenced and heard in the main office of the Commission. However, an action involving a corporation whose principal office is within a region where the Commission has an extension office may be filed with and heard in such extension office.

RULE II
PARTIES
SECTION 1. Who may be Parties. — Only natural or juridical persons or entities authorized by law may be parties.

SEC. 2. Parties in Interest. — All actions or claims filed with the Commission must be prosecuted and defended in the name of the real party in interest. All persons having an interest in the subject of the actions or claims and in obtaining the relief demanded shall be joined as complainants or petitioners. All persons who claim an interest in the controversy or the subject thereof adverse to the complainant or petitioner or who are necessary to a complete determination or settlement of the questions involved therein shall be joined as respondents.

SEC. 3. Representative Parties. — A trustee of an express trust, a guardian, executor or administrator, or a party authorized by statute, may sue or be sued without joining the party for whose benefit the action is presented or defended; but the Hearing officer may, at any stage of the proceedings, order such beneficiary to be made a party. 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.

SEC. 4. Class Suit. — When the subject matter of the action or claim is one of common or general interest to many persons, and the parties are so numerous that it is impracticable to join all before the Commission, one or more may sue or defend for the benefit of all. But in such case, the Hearing Officer shall make sure that the parties actually before it are sufficiently numerous and representative so that all interests concerned are fully protected.

SEC. 5. Derivative Action. — No action or claim shall be brought by a stockholder in the name of a corporation unless the complainant (a) was a stockholder at the time the questioned transaction occurred as well as at the time the action was filed and remains a stockholder during the pendency of the action, and (b) the complainant alleges with particularity the efforts, if any, made by the complainant to obtain the action he desires, or the reason for not making the effort.

An action authorized by this section shall not be discontinued, compromised or settled without approval of the Hearing Officer. If the Hearing Officer determines that the interest of the stockholders or of any class thereof will be substantially affected by the discontinuance, compromise or settlement, the Hearing Officer may direct that notice, by publication or otherwise, be given to the stockholders or any class thereof whose interests he determines will be so affected.

SEC. 6. Compulsory Joinder of Indispensable Parties. — Parties in interest without whom no final determination can be had of an action shall be joined either as complainant, petitioner or respondent.

SEC. Transfer of interest. — In case of any transfer of interest, the action may be continued by or against the original party, unless the Hearing Officer upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

SEC. 8. Intervention. — A person may, at any stage of the proceedings, be permitted by the Hearing Officer, in his discretion, to intervene in an action, if he has legal interest in the matter in litigation or in the success of either of the parties or an interest against both, or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the Commission.

SEC 9. Motion for Intervention. — A person desiring to intervene shall file a motion for leave of the Commission with notice upon all parties to the action.

SECTION 10. Discretion of the Hearing Officer. — In allowing or disallowing a motion for intervention, the Hearing Officer 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 right may be fully protected, in a separate proceeding.

SEC. 11. Complaint/Petition or Answer in Intervention. — The intervention shall be made by complaint/petition filed and served in regular form and may be answered as if it was an original complaint/petition but where intervenor unites with the respondent in resisting the claims of the complainant or petitioner, the intervention may be made in the form of an answer to the complaint or petition.

SEC. 12. When to File. — Unless a shorter period is fixed by the Hearing Officer, the complaint/petition or answer in intervention shall be filed within ten (10) days from notice of the order permitting the intervention.

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RULE III
COMMENCEMENT OF ACTION: PLEADINGS

SECTION 1. Pleadings Allowed. — The only pleadings allowed to be filed are the complaint/petition, compulsory counterclaim pleaded in the answer, the answer thereto, the reply and the rejoinder.

SEC. 2. Verification. — All pleadings filed with the Commission shall be verified by an affidavit that the affiant has read the pleading and the allegations therein are true and correct of his own knowledge and belief. A pleading which contains a verification based on information and belief", or upon "knowledges, information and belief," or which lacks a proper verification, shall be treated as an unsigned pleading and shall not be considered as filed.

SEC. 3. Certification. — The complainant/petitioner 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 thereto commenced any action or filed any claim involving the same issues in any court, tribunal or 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 the fact within five (5) days therefrom to the Commission 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 cause the dismissal of the petition without prejudice. The submission of a false certification or non-compliance with, any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

SEC. 4. Prohibited Pleadings. — The following pleadings, motions, or petitions shall not be allowed in the cases covered by these Rules:

- Motion to dismiss the complaint;

- Motion for a bill of particulars;

- Motion for new trial or for reconsideration of judgment or order, or for reopening of trial;

- Petition for relief from judgment;

- Motion for extension of time to file pleadings, affidavits or any other paper;

- Memoranda;

- Motion to declare the defendant in default;

- Motion for Postponement;

- Supplemental pleadings; and

- Motion for leave to amend pleadings.

SEC. 5. Duty of Hearing Officer. — The Hearing Officer shall, from an examination of the allegations in the complaint/petition and such evidence as may be attached thereto, dismiss the complaint/petition if it is not sufficient in form and substance. Otherwise, he shall forthwith issue the corresponding summons within five (5) days from the filing of the complaint/petition.

SEC. 6. Form of Pleadings. — All pleadings filed shall be printed, mimeographed or typewritten on legal size bond papers and shall be in English or Filipino.

Each pleading shall contain a caption setting forth the name of the Commission, the title of the case, the case number, and designation of the pleading.

The original and two (2) signed copies of every pleading shall be filed with the Commission, except a complaint, petition, or petition in intervention where there are more than one respondent in which case, there shall be filed as many additional signed copies of the said pleading as there are additional respondents.

No pleading shall be accepted by the Commission unless it conforms to the formal requirements provided by these rules.

SEC. 7. Complaint/Petition. — The complaint/petition shall contain the names and residences of the parties, a concise statement of the ultimate facts constituting the complainant's or petitioner's cause or causes of action, a brief statement of the right/s sought to be enforced, the law, rule or regulation under which the complaint/petition is based, a summary of the complainant's or petitioner's claims, a statement of the issues to be determined, the affidavits of witnesses, copies of documentary and other evidence, and the relief/s sought.

SEC. 8. Capacity. — The 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 of any party to sue or be sued in a representative capacity, shall do so by specific denial, which shall include such supporting particulars as are peculiarly within the pleaders knowledge.

SEC. 9. Answer. — Within twenty (20) days from service of summons, the defendant shall file his answer to the complaint and serve a copy thereof on the plaintiff. The answer shall contain the affidavits of witnesses, and copies of documentary and other evidence, if any. Affirmative and negative defenses not pleaded in the answer shall be deemed waived, except for lack of jurisdiction and failure to state a cause of action. Cross-claims and compulsory counterclaims not asserted therein shall be considered barred. The answer to counterclaims shall be filed within fifteen (15) days from service of the answer in which they are pleaded.

SEC. 10. Effect of Failure to Answer. — Should the defendant fail to answer the complaint within the period above provided, he shall be considered in default. The Hearing Officer shall, motu proprio, proceed to render judgment granting the plaintiff such relief, as his pleading may warrant, unless the Hearing Officer in his discretion requires the plaintiff to submit evidence which shall be received ex parte.

SEC. 11. Reply and Rejoinder. — Within fifteen (15) days from the service of the answer, the plaintiff may rebut any matter raised in the answer by way of a reply. A rejoinder on the matters alleged in the reply may be submitted by the respondent within fifteen (15) days from receipt of the reply. The reply and rejoinder shall likewise contain the affidavits of witnesses, documentary and other evidence in support thereof, if any.

SEC. 12. Inadmissibility of Affidavit, Document and Other Evidence. — The affidavits of the parties respective witnesses, documents, and other supporting evidence shall be attached to the appropriate pleading. A witness without the requisite affidavit shall not be allowed to testify except an adverse party or hostile witness. Documents and other evidence or copies thereof which are not attached to the pleadings shall be inadmissible. However, the Hearing Officer may allow for compelling reasons, the submission of affidavits and other documents as the parties may prove necessary during the pre-trial which must be submitted not later than five (5) days prior to the commencement of the trial.

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Supporting 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 on the matters stated therein.

SEC. 13. 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 of 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.

SEC. 14. How to Contest Genuineness of 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 set forth what he claims to be the facts; but this provision does not apply when the adverse party does not appear to be a party to the instrument when compliance with an order for an inspection of the original instrument is refused.

SEC. 15. Specific Denial. — The respondent 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 which he will rely upon to support his qualification of an averment. Where the respondent desires to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Where the respondent is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint or petition, he shall so state, and this shall have the effect of a denial, otherwise the averment shall be deemed admitted.

SEC. 16. When Amendments Allowed 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 case of a reply, at any time within ten (10) days after it is served.

SEC. 17. Docket Fee and Other Fees. — The docket fee for filing a complaint or petition, complaint or petition in intervention, unless otherwise provided by the Commission, shall be one-tenth (1/10) of one percent (1%) of the amount claimed or prayed for plus twenty percent (20%) of such amount, exclusive of interest, but which shall not be less than one thousand pesos (P1,000.00); Provided, however, that if there is no claim for money, the docket fee shall be one thousand pesos (P1,000.00). Provided; further, that in cases for suspension of payments, rehabilitation, and involuntary dissolution the docket fee shall not be less than five thousand pesos (P5,000.00). Provided, finally, that a complaint or petition shall be deemed filed only after the payment of the required docket fees and all other fees which by law are payable.

There shall also be collected as process service fee the amount of one hundred pesos (P100.00) for every respondent named in the complaint or petition.

RULE IV
SUMMONS
SECTION 1. Summons. — Upon the filing of the complaint or petition, the corresponding summons to the respondent shall forthwith be issued within five (5) days from date of filing of the complaint.

SECTION 2. Contents. — The summons shall be directed to the respondent under the seal of the Commission, and shall contain:

a. The names of the parties to the action;

b. A direction that the respondent answer within the time fixed by these Rules; and

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c. A notice that unless the respondent so answers, plaintiff will take judgment by default and may be granted the relief applied for as provided for in Rule III, Sec. 10 of these Rules.

SECTION 3. Alias Summons. — If summons is returned without being served on any or all the respondents, or if it has been lost, the Hearing Officer on demand of the petitioner or complainant may issue alias summons as the case may require, in the same form as the original.

SECTION 4. By Whom Summons may be Served. — The summons may be served by the process server of the Commission, or for special reasons by any person specially authorized by the Hearing Officer.

SECTION 5. Return of Summons. — When the service has been completed, the process server shall return the summons to the Commission attached to the proof of service.

SECTION 6. Personal Service of Summons. — The summons shall be served by handing a copy thereof to the respondent in person or if he refuses to receive it, by tendering it to him. If the respondent is a corporation, partnership or association organized and registered under the laws of the Philippines, service must be made on the President, Manager, Corporate Secretary, Cashier, Agent or any of its directors.

SECTION 7. Substituted Service. — If, for justifiable causes, the respondent cannot be served personally with the summons as provided in the preceding section, service may be effected, (a) by leaving copies of the summons at the respondent's dwelling house or residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at respondent's principal office or regular place of business with some competent person in charge thereof.

SECTION 8. Service Upon Private Foreign Entities. — If the respondent is a foreign corporation, partnership or association doing 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 officials designated by law to that effect or on any of its officers or agents within the; Philippines.

SECTION 9. Service by Publication. — When the address of a respondent is unknown, or even if known, his whereabouts cannot be ascertained by diligent inquiry, service of summons may, by leave of the Commission, be effected upon him by publication of the complaint or petition once in a newspaper of general circulation and in such places as the Commission may order. The publication expenses shall be defrayed by the petitioner or complainant. Likewise, when the respondent does not reside or is not found in the Philippines, service may, by leave of the Commission, be effected out of the Philippines by personal service in the manner provided under Section 6 hereof, and which may be effected through the Office of the Department of Foreign Affairs; or by publication of the complaint or petition once in a newspaper of general circulation and in such places as the Commission may order. A copy of the complaint or petition as well as the order granting such leave shall be sent by registered mail to the last known address of the respondent.

Any order granting such leave shall specify a reasonable time which shall not be less than thirty (30) days from the date of last publication, in case of a resident respondent whose address is unknown or whose whereabouts cannot be ascertained and not less than sixty (60) days from the date of last publication, in case of non-resident respondent, within which the respondent must answer.

Any application to the Commission for leave to effect service of summons by publication shall be made by motion in writing, supported by affidavit of the petitioner or complainant or some person on his behalf, setting forth the grounds for the application.

SECTION 10. Service by Publication in Action for Suspension or Revocation of Franchise of a Corporation

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Instituted by the Prosecution and Enforcement Department. — In actions for suspension or revocation of franchise of a corporation instituted by the Prosecution and Enforcement Department at the request and upon the relation of another person when the address of respondent is unknown or even if known, his whereabouts cannot be ascertained by diligent inquiry, service of summons, may, by leave of the Commission, be effected upon the respondent by publication of the complaint or petition and the order granting such leave once in a newspaper of general circulation. The publication expenses shall be defrayed by the person at whose request and upon whose relation the same is bought.

SECTION 11. Proof of Service. — The proof of service of a summons should be made in writing by the server setting forth the manner, the place and the date of service; it 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 the server of the Commission.

When the service has been made; by publication on a resident respondent whose address is unknown or whose whereabouts cannot be ascertained, service may be proved by the affidavit of the printer, editor or business or advertising manager and to which affidavit a copy of such publication shall be attached.

When the service has been made by publication on a non-resident respondent, service may be proved, aside from the affidavit of the printer, editor or business or advertising manager, by the affidavit of the server that a copy of the complaint or petition and the order of the Commission was sent by registered mail to the last known address of the respondent.

The respondent's voluntary appearance before the Commission shall be equivalent to service for purposes of acquiring jurisdiction over his person, unless he makes an explicit reservation thereto.

RULE V
PROCEEDINGS BEFORE THE DESIGNATED HEARING OFFICER

SECTION 1. Preliminary Conference. — In any action, the Hearing Officer shall set the case for preliminary conference within ten (10) days after the last pleading is filed, and the parties and their attorneys shall be directed to appear before the Hearing Officer on the date set on the notice, to consider, based on the affidavits, documents and other evidence submitted by the parties:

a. The possibility of an amicable settlement;

b. The simplification of the issues;

c. Schedule hearing which must be undertaken continuously as scheduled until completed and terminated; and

d. Such other matters as may aid in the just and speedy disposition of the case.

The Hearing officer shall terminate the preliminary conference ten (10) days after its commencement, whether or not the parties have agreed to settle their differences.

SECTION 2. Amicable Settlement. — During the preliminary conference, the Hearing Officer shall take the initiative in seeing to it that the parties exhaust all available means to arrive at a fair and reasonable settlement of the case. The parties, on the other hand, shall be prepared to present during the preliminary conference specific proposals or counter-proposals to effect such settlement.

Amicable settlement shall always be encouraged, even at any stage of the proceedings, provided it shall not be prejudicial to the public interest or to third parties or contrary to law, rules or regulations of the Commission nor against the good morals or public policy. The amicable settlement shall, as far as practicable, be reduced into writing, duly signed by the parties and/or their counsels, which shall be the basis of the corresponding order or

decision of the Hearing Officer.

SECTION 3. Failure to Appear at Preliminary Conference. — The failure of the plaintiff to appear in the preliminary conference shall lead to a dismissal of his petition. The defendant who appears in the absence of the plaintiff shall be entitled to judgment on his counterclaim based on the facts alleged and limited to what is prayed for in the answer. Provided, however, that the Hearing Officer may, in his discretion, reduce the amount of damages and attorney's fees claimed for being excessive or otherwise unconscionable.

If a sole defendant shall fail to appear, the plaintiff shall be entitled to judgment in accordance with the preceding paragraph. This rule shall not apply where one or more defendants sued under a common cause of action who had pleaded a common defense shall appear at the preliminary conference.

SECTION 4. Preliminary Conference Order. — After the preliminary conference, the Hearing Officer shall issue an Order reciting the action taken at the conference; the stipulations made by the parties as to any of the matters considered; a recital of such other evidence as the parties may have agreed upon; the witnesses, if any, to be presented by all the parties; and the scheduled dates of hearing for presentation of all such witnesses. Provided, however, that the hearings shall be commenced not later than fifteen (15) days from the date of the termination of the preliminary conference and completed within twenty (20) days from the date of the first hearing. Provided, further, that the failure of a party to present a witness or witnesses on a scheduled hearing date shall be deemed a waiver of such hearing date. Provided, finally, that a party may present such witness or witnesses within the remaining hearing dates.

SECTION 5. Submission of Position Papers and Draft Decisions. — Within fifteen (15) days after the submission of case for resolution, the parties shall submit their position papers setting forth the law and the facts relied upon by them. They shall also be required to submit a draft of the decision or resolution they seek, stating clearly and distinctly the facts and the law upon which it is based. The Hearing Officer may adopt, in whole or in part, either of the parties' draft decision or resolution, or reject both.

RULE VI
DECISION
SECTION 1. Decision. — The Hearing Officer shall render a decision within twenty (20) days from submission of the case for resolution.

SECTION 2. Finality of Decision. — The decision of the Hearing Officer, in the absence of appeal therefrom, shall become final and executory fifteen (15) days from the date of receipt thereof.

RULE VII
CONTEMPT
SECTION 1. Direct Contempt. — A person guilty of misbehavior in the presence of or so near the Hearing Officer as to obstruct or interrupt the proceedings before him, including disrespect towards the Hearing Officer, offensive personalities towards others, or refusal to be sworn to or answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so, may be summarily adjudged in contempt by the Hearing Officer and punished by fine not exceeding one thousand pesos (P1,000.00) or imprisonment not exceeding ten (10) days, or both such fine and imprisonment. The Hearing Officer may require the Sheriff or other police agencies of the locality where the hearing or investigation is conducted, to assist in the enforcement of this action.

SECTION 2. Indirect Contempt. — Any person who shall fail or refuse to comply with the promulgated decision, order or writ of the Hearing Officer without justifiable cause after being required to do so, shall be punished for contempt pursuant to the applicable provisions of the New Rules of Court.

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RULE VIII
SUBPOENA AND SUBPOENA DUCES TECUM

SECTION 1. When Issued. — If the attendance of a witness or the production of clearly specified documents is necessary, any party may request the issuance of a subpoena or subpoena duces tecum before or during the scheduled preliminary conference. Provided, however, that a subpoena may only be issued if the witness or document sought to be subpoenaed has been previously referred to or stated in the petition/complaint, the answer or any subsequent pleadings.

RULE IX
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 Hearing Officer 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. Provided, however, that request for the production or inspection of documents or things shall be made before or during the preliminary conference and only for documents and things previously referred to in the complaint/petition, answer, reply, or rejoinder.

RULE X
PRELIMINARY INJUNCTION

SECTION 1. Issuance of Preliminary Injunction. — A preliminary injunction may be granted by the Hearing Officer, upon bond filed with the Commission to be fixed by the Hearing Officer, at any time after the commencement of the action and before judgment when it is established after notice and hearing:

a. That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

b. That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

c. That a party, court, agency or person is doing, threatens, or is about to do, or is procuring or suffering to be done, some act probably in violation of the rights of the applicant respecting the subject of the action, and tending to render the judgment ineffectual.

SECTION 2. Objection to, or Dissolution of, Injunction. — The application for injunction may be denied upon a showing of its insufficiency. It may also be denied, or, if granted, may be dissolved on other grounds upon affidavit 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, 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 Hearing Officer conditioned that he will pay all damages which the applicant may suffer by the refusal or the dissolution of the injunction. If it appears that the extent of the preliminary injunction granted is too great, it must be modified.

SECTION 3. Final Injunction. — 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 Hearing Officer 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.

SECTION 4. Temporary Restraining Order. — Any complaint or initiatory pleading which contains a prayer for the issuance of a Temporary Restraining Order (TRO) shall be referred to the Chairman or in his absence, the most senior Associate Commissioner, for appropriate action.

SECTION 5. TRO Issued Ex-Parte. — If the Chairman, or in his absence the most senior Associate Commissioner, determines, in his discretion, that the matter is of extreme urgency such that unless a TRO is issued grave injustice and irreparable injury will arise, he may forthwith issue a TRO effective only for seventy-two (72) hours from issuance. The parties shall immediately be summoned for raffle of the case to a Hearing Officer/Panel in their presence.

SECTION 6. Summary Hearing. — Before the expiry of the seventy-two (72) hours, the Hearing Officer/Panel to whom the case was raffled shall conduct a summary hearing to determine whether the TRO shall be extended for the remaining seventeen (17) days. In case where no seventy-two (72) hour-TRO has been issued, action upon the application for TRO shall be taken by the Hearing Officer/Panel only after all the parties are heard within twenty-four (24) hours after the case is transmitted to him after the raffle.

SECTION 7. When Hearing Deemed Conducted. — The summary hearing shall be deemed to have been conducted when the adverse party or his counsel has been given the opportunity to oppose the application for TRO whether orally or in writing. Provided, however, that the failure on the part of the adverse party or counsel to oppose the application shall be deemed a waiver of his right to be heard thereon. In which case, the application for TRO shall be deemed submitted for resolution.

SECTION 8. Application for Preliminary Injunction. — During the period of the effectivity of the TRO, the application for writ of preliminary injunction, if any, shall be heard and resolved by the Hearing Officer/Panel assigned to the case. If the hearings thereon are not completed within the period of the effectivity of the TRO for any reasons whatsoever, the Hearing Officer/Panel shall resolve the application for preliminary injunction on the basis of whatever evidence is available from the records of the case.

SECTION 9. Applications for TRO after Commencement of the Action. — At any time after the commencement of the action but before judgment, any application for TRO by any of the parties shall be referred to the office of the SICD Director/Head for appropriate action. The procedure provided in the preceding sections shall apply.

SECTION 10. Prohibitions. — Any motion that would delay the resolution of the application for TRO is prohibited. A petition for Certiorari with respect to the issuance of seventy-two (72) — TRO is likewise, prohibited.

RULE XI
PRELIMINARY ATTACHMENT

SECTION 1. Preliminary Attachment. — At the commencement or at any time before entry of judgment, the complainant or petitioner or any proper party may have the property of the adverse party attached as security for the satisfaction of judgment that may be recovered in those cases analogous to those expressly provided under Rule 57 (Preliminary Attachment) of the Rules of Court.

SECTION 2. Issuance and Contents of Order. — An order of attachment may be issued upon motion with notice and hearing by the Hearing Officer where the action or claim is pending, and must require the sheriff of the

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Commission to attach so much of the property in the Philippines of the party against whom it is issued, not exempt from execution, as may be sufficient to satisfy the applicant's demand unless such party makes deposit or gives a bond in an amount equal to that fixed in the order, which may be the amount sufficient to satisfy the applicants demand or the value of the property to be attached as stated by the applicant, exclusive of costs.

SECTION 3. Condition of Bond. — The party applying for the order must thereafter give a bond executed to the adverse party in the amount fixed by the Hearing Officer in his order granting the issuance of the writ, conditioned that the applicant will pay all the costs which may be adjudged to the adverse party and all damages which may sustain by reason of the attachment if the Hearing Officer shall finally adjudge that the applicant was not entitled thereto.

RULE XII
RECEIVERS
SECTION 1. Appointment of Receiver. — Upon verified petition, one or more receivers of the property, real or personal which is the subject of the action or claim, may be appointed by the Hearing Officer in the following cases:

a. When a corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights;

b. When it appears from the complaint or answer, and such other proof as the Hearing Officer may require, that the party applying for the appointment of receiver has an' interest in the property or fund which is the subject of the action or claim, and that such property or fund is in danger: of being lost, removed, or materially injured unless a receiver be appointed to guard and preserve it; and.

c. Whenever in other cases it appears that the appointment of the receiver is the most convenient and feasible means of preserving, administering, or disposing of the property in litigation.

SECTION 2. Bond on Appointment of Receiver. — Before issuing the order appointing a receiver the Hearing Officer 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 Hearing Officer, 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 Hearing Officer may, in his discretion, at any time after the appointment, require an additional bond as further security for such damages.

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 Hearing Officer, 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.

RULE XIII
MANAGEMENT COMMITTEE
SECTION 1. Appointment of Management Committee. — The Hearing Officer may, upon verified petition or motu proprio, create and appoint a management committee to undertake the management of corporations, partnerships or other associations when there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties or paralization of business operations of such corporations or entities which may be prejudicial to the interest of minority stockholders, parties-litigants or the general public.

RULE XIV

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ELECTION CASES

SECTION 1. To What Cases Applicable. — The provisions under this rule shall apply to disputes involving the election of directors or trustees in stock or non-stock corporations, respectively.

SECTION 2. Pleadings Allowed. — The only pleadings allowed to be filed are the complaint or petition, the answer thereto, and the compulsory counterclaim. Counterclaims or cross-claims must be asserted in the answer or be considered barred. All pleadings must be verified.

SECTION 3. Duty of the Hearing Officer Upon the Filing of the Complaint or Petition. — Upon the filing of the complaint or petition, the Hearing Officer from a consideration of the allegations thereof.

a. May dismiss the complaint or petition outright due to

> 1. failure to file the case within fifteen (15) days from the date of the election if the by-laws do not provide for a procedure for resolution, or within fifteen (15) days from the resolution of the controversy by the corporation as may be provided for in its by-laws;
>
> 2. failure to exhaust intra-corporate remedies in election protests as may be provided for in the corporation's by-laws; or

b. May order the issuance of summons.

SECTION 4. Answer. — Upon being served with summons, the respondent must answer the complaint or petition within ten (10) days from service thereof which will include all available grounds for a motion to dismiss. The answer to a compulsory counterclaim must be filed within ten (10) days from service thereof.

SECTION 5. Effect of Failure to Answer. — Upon failure to answer the complaint or petition, and the compulsory counterclaim within the reglementary 10-day period herein provided, the Hearing Officer motu propio or on motion, shall render judgment as may be warranted by the facts alleged in the complaint or petition, or compulsory counterclaim.

SECTION 6. Preliminary Conference. — Not later than ten (10) days after the answer is filed, a preliminary conference shall be held, during which the parties as well as their respective counsel shall be present. However, a party who is unable to attend the conference shall deliver to his counsel a special power-of-attorney empowering the latter to represent him, with the authority to enter into a compromise.

The parties shall submit a pre-trial brief at least three (3) days before the preliminary conference which shall include:

- any proposal for an amicable settlement;

- simplified issues of the case;

- facts and documents sought to be admitted or stipulated on;

- number and names of witnesses, and a brief statement of their testimony; and

- such other matters as may aid in the prompt disposition of the petition.

A party who shall fail to attend the preliminary conference or to submit a pre-trial brief may be non-suited or declared as in default and the Hearing Officer may proceed to render judgment as may be warranted by the facts alleged in the pleadings.

After the preliminary conference, the Hearing Officer shall immediately issue a preliminary conference order

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specifying the matters taken up during the conference including the stipulation of facts entered into and delineating the issue/s subject of presentation of evidence.

SECTION 7. Judgment, Hearing, When Ordered. — Should the Hearing Officer find upon a consideration of the pleadings, the affidavits and other evidences, and position statements submitted by the parties that a judgment may be rendered thereon without need of a formal hearing, he may proceed to render judgment.

In cases where the Hearing Officer deems it necessary to hold a hearing to clarify specific factual matters before rendering judgment, he shall set the case for hearing for the purpose. At such hearing, only witnesses whose affidavits were submitted may be asked clarificatory questions by the Hearing Officer and may be cross-examined by the adverse party.

The order setting the case for hearing shall specify the witnesses who will be called to testify, and the matters on which their examination will deal.

SECTION 8. Prohibited Pleadings and Motions. — The following pleadings, motions or petitions shall not be allowed:

- Motion to Dismiss;

- Motion for a Bill of Particulars;

- Motion for New Trial or for-Reconsideration;

- Petition for Relief from Judgment;

- Motion for Extension of Time to File Pleadings, Affidavits or any Other Paper;

- Memorandum;

- Petition for Certiorari, Mandamus or Prohibition against any Interlocutory Order of the Hearing Officer;

- Motion to Declare Respondent in Default;

- Motion for Postponement;

- Reply or Rejoinder;

- Third Party Complaint; and

- Intervention.

SECTION 9. 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 portions thereof from the record.

SECTION 10. Hearing and Judgment. — In cases where a hearing is ordered, the same must be finished on the same date set therefor, insofar as practicable. The judgment in the case must be rendered within fifteen (15) working days from termination of the hearing.

SECTION 11. Decision, Immediately Executory. — The Decision of the Hearing Officer shall be immediately executory unless stayed by the Commission En Banc.

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RULE XV
APPEAL

SECTION 1. Appeal from the Resolution, Ruling or Order of the Hearing Officer. — Any decision, ruling or order of the Hearing Order may be appealed by the aggrieved party to the Commission sitting En Banc within fifteen (15) days from receipt by the appellant of notice of such resolution, ruling or order.

SECTION 2. Oral testimony. — If the Commission En Banc, exercising its appellate jurisdiction, determines that the oral testimony of a witness is indispensable to deciding the case, it may call the witness to give oral testimony. The Commission, or any Commissioner, may likewise propound clarificatory questions to the witness if it believes that there are matters which are necessary to be clarified before the case can be, testimony if the party did not submit an affidavit of said witness to the Hearing Officer.

SECTION 3. Rulings, Orders, Resolutions of the Commission En Banc. — In all cases, the rulings, orders and resolutions of the Commission En Banc shall become final after the lapse of fifteen (15) days from receipt of a copy thereof by the parties.

RULE XVI
EFFECTIVITY

SECTION 1. Effectivity. — These Rules shall take effect fifteen (15) days after publication in a newspaper of general circulation.

Adopted: 15 July 1999

(SGD.) PERFECTO R. YASAY, JR.
Chairman

(SGD.) FE ELOISA C. GLORIA
(SGD.) ROSALINDA O. CASIGURAN
(SGD.) EDIJER A. MARTINEZ
(SGD.) DANILO L. CONCEPCION
Associate Commissioners

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