

ELPIDIO B. VALINO, PETITIONER, VS. ALVIN P. VERGARA, TOMAS N. JOSON III, RAUL P. MENDOZA, ATTY. HAROLD A. RAMOS, ET AL., RESPONDENTS.*G.R. No. 180492. March 13, 2009*

Ponente: NACHURA, J.

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Before this Court is a Petition[1] for Certiorari under Rule 65 of the Rules of Civil Procedure, seeking the annulment of (a) the June 28, 2007 Resolution No. 8212[2] or the Omnibus Resolution on Pending Cases issued by the Commission on Elections (COMELEC) en banc (Resolution No. 8212) and (b) the October 18, 2007 Order[3] of the COMELEC Second Division (assailed Order).

The Facts

In the May 14, 2007 national and local elections, petitioner Elpidio B. Valino (petitioner), together with respondents Alvin P. Vergara (Vergara), Tomas N. Joson III (Joson) and Raul P. Mendoza (Mendoza) (respondents), vied for the local position of mayor in Cabanatuan City, Nueva Ecija (the City).[4] During the campaign period, petitioner complained about the illegal display and installation of campaign posters, streamers and other materials in all polling places, streets and highways of the City by local and national candidates. On May 8, 2007, petitioner wrote respondent Atty. Harold Ramos (Atty. Ramos), Election Officer of the COMELEC-Cabanatuan, about these violations and reminded the latter of his duty to remove illegal campaign materials and to impose sanctions on the erring candidates.[5] Petitioner also wrote Police Superintendent Eliseo D.C. Cruz (P/Supt. Cruz), City Chief of Police, on May 11, 2007, reiterating his complaint and demanding that the clean-up drive against illegal campaign materials be continuously implemented up to May 14, 2007.[6] On May 13 and 14, 2007, petitioner took pictures of several polling places showing the violations committed by respondents and other candidates.[7] No action was taken by anyone to remove the illegal campaign materials.

After the elections, Vergara won and was proclaimed City Mayor.[8] On May 25, 2007, petitioner filed with the COMELEC a Petition[9] for Violation of Republic Act (R.A.) No. 9006, otherwise known as the Fair Election Act, against respondents, docketed as Special Case (SPC) No. 07-152 (SPC 07-152). The petition sought the cancellation of the proclamation of respondent Vergara and the other elected city officials, and enjoined them from exercising their respective duties as elected city officials, for having intentionally caused the installation of illegal campaign materials outside the authorized common poster areas in violation of the law. The case was raffled to the COMELEC Second Division.

On June 28, 2007, the COMELEC en banc issued Resolution No. 8212 pursuant to Section 16 of R.A. No. 7166,[10] and SPC No. 07-152 was not included in the list of pre-proclamation cases that shall remain active after June 30, 2007. Petitioner alleged that he came to know of Resolution No. 8212 from the newspaper, Manila Bulletin,[11] published on July 9, 2007, with its headline "Hundreds of Poll Cases Dismissed" by the COMELEC. Petitioner also alleged that he personally received a photocopy of the Resolution on July 16, 2007, and was

advised that SPC 07-152 was already dismissed by the COMELEC Second Division.[12]

Aggrieved, petitioner, on July 18, 2007, without the assistance of counsel, filed a Motion for Reconsideration[13] praying that SPC 07-152 be included in the list of active cases, and the proceedings therein continue beyond June 30, 2007. Petitioner asseverated that he filed the Motion with the COMELEC en banc through its Second Division, claiming that only the COMELEC en banc, which issued Resolution No. 8212, had the jurisdiction to resolve his Motion. Petitioner, however, received no reply from the COMELEC en banc. Subsequently, on August 21, 2007 and October 4, 2007, petitioner filed a Manifestation and Motion,[14] and an Urgent Omnibus Motion,[15] respectively, reiterating his Motion for Reconsideration, but no immediate reply came from the COMELEC.

On October 18, 2007, the COMELEC Second Division issued the assailed Order, forwarding to the Clerk of the COMELEC the original case folder of SPC 07-152, being a pre-proclamation case considered not to have survived pursuant to Resolution No. 8212. Petitioner averred that he received a copy of the assailed Order on November 13, 2007.[16] Hence, on November 28, 2007, petitioner filed the instant petition before this Court, assigning the following errors:

- Violation of the due process clause of the Constitution;
- Failure of the COMELEC to follow the prescribed laws regarding cases of disqualification and hearing thereof;
- The complaint filed by the Petitioner is not among those considered pre-proclamation cases dismissed by the COMELEC; and
- The COMELEC as the leading Constitutional Body tasked to implement Election Laws but which [was] not followed by its authorized representatives in Cabanatuan City, Province of Nueva Ecija.[17]

Petitioner argues that he was denied due process because no initial hearing or preliminary investigation was conducted on his petition to determine the guilt of respondents for violation of election laws. Petitioner adds that Resolution No. 8212 was issued only to accommodate and meet the deadline for the proclamation of duly elected officials at the expense of due process; and of honest, fair and credible elections. Moreover, petitioner alleges that Atty. Ramos and respondents conspired to circumvent the law in favor of Vergara by being silent about the complaint of petitioner. Lastly, petitioner manifests that Atty. Ramos, in dereliction of duty and with gross negligence, succumbed to the pressures, whims and caprices of respondents; and failed to conduct a summary hearing to resolve the complaint, without giving a formal notice to any of respondents and ordering the removal of their respective illegal campaign materials.[18]

Only respondents Vergara and the COMELEC, through the Office of the Solicitor General (OSG), filed their comments and, subsequently, their respective memoranda. In our Resolution of February 24, 2009, we dispensed with the other respondents' memoranda.

Vergara claims that he was not charged with an election offense; that Atty. Ramos and P/Supt. Cruz did not send any notice to him requiring him to remove the alleged offending campaign materials; and that he was not aware at all of their existence. Vergara submits that the instant petition is insufficient in form and substance; hence, it ought to be dismissed.[19]

The COMELEC, through the OSG, reiterates the rule that a decision, order or resolution issued by a division of the COMELEC must be elevated first to the COMELEC en banc via a motion for reconsideration, and it is the final decision of the COMELEC en banc that can be brought to the Supreme Court on certiorari pursuant to Section 7,[20] Article IX-A of the 1987 Constitution; that petitioner does not dispute his failure to elevate the

assailed Order of the COMELEC Second Division to the COMELEC en banc; and that this Court has no power to review via certiorari an interlocutory order or even a final resolution of a division of the COMELEC. The OSG postulates that a motion for reconsideration is the plain and adequate remedy under the law and, thus, the failure of petitioner to comply with this mandatory procedural requirement constitutes a ground for the dismissal of the instant petition.[21]

Our Ruling

The instant petition is bereft of merit.

We acknowledge that Resolution No. 8212 is an issuance in the exercise of the COMELEC's adjudicatory or quasi-judicial function pursuant to the second paragraph of Section 16[22] of R.A. No. 7166. The determination by the COMELEC of the merits of a pre-proclamation case definitely involves the exercise of adjudicatory powers, wherein the COMELEC examines and weighs the parties' pieces of evidence vis-à-vis their respective arguments, and considers whether, on the basis of the evidence thus far presented, the case appears to have merit. Where a power rests in judgment or discretion, so that the exercise thereof is of judicial nature or character, but does not involve the exercise of functions of a judge, or is conferred upon an officer other than a judicial officer, it is deemed quasi-judicial.[23]

Petitioner's pre-proclamation case was not in the list annexed to Resolution No. 8212. Simply put, the COMELEC en banc, in Resolution No. 8212, found petitioner's case unmeritorious and, thus, excluded it from the list of cases that would remain active beyond June 30, 2007. Accordingly, petitioner could no longer expect any favorable ruling from the COMELEC en banc. The appropriate recourse of petitioner should have been a petition for certiorari filed before this Court within thirty (30) days from notice of Resolution No. 8212, pursuant to Sections 2[24] and 3,[25] Rule 64 in connection with Rule 65 of the Rules of Civil Procedure. However, petitioner failed to do so and, instead, filed a motion for reconsideration addressed to the COMELEC en banc through its Second Division. The failure of the petitioner to seasonably undertake the proper recourse before this Court is fatal to his cause.

The filing of his Motion for Reconsideration is of no moment. Section 1(d), Rule 13 of the 1993 COMELEC Rules of Procedure categorically prohibits a motion to reconsider a resolution of the COMELEC en banc except in cases involving election offenses. As held in *Bautista v. COMELEC*:[26]

We hold that petitioner acted correctly in filing the present petition because the resolution of the COMELEC in question is not subject to reconsideration and, therefore, any party who disagreed with it only had one recourse, and that was to file a petition for certiorari under Rule 65 of the Rules of Civil Procedure. Rule 13, §1 of the COMELEC Rules of Procedure provides:

What Pleadings are Not Allowed. -- The following pleadings are not allowed:

x x x x

d) motion for reconsideration of an en banc ruling, resolution, order or decision except in election offense cases;

x x x x

As the case before the COMELEC did not involve an election offense, reconsideration of the COMELEC resolution was not possible and petitioner had no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. For him to wait until the COMELEC denied his motion would be to allow the reglementary period for filing a petition for certiorari with this Court to run and expire.[27]

Time and again, we held that rules of procedure exist for a noble purpose, and to disregard such rules, in the guise of liberal construction, would be to defeat such purpose. Procedural rules are not to be disdained as mere technicalities. They may not be ignored to suit the convenience of a party. Adjective law ensures the effective enforcement of substantive rights through the orderly and speedy administration of justice. Rules are not intended to hamper litigants or complicate litigation; they help provide a vital system of justice where suitors may be heard following judicial procedure and in the correct forum. Public order and our system of justice are well served by a conscientious observance by the parties of the procedural rules.[28] We see no cogent reason why we should exempt petitioner's case from this doctrine.

Based on the foregoing disquisitions, Resolution No. 8212, with respect to petitioner, had already become final and executory and, therefore, beyond the purview of this Court to act upon.[29]

Ostensibly, petitioner's case before the COMELEC-Cabanatuan was a complaint against the respondents for installing illegal campaign materials outside the common poster areas and near the polling places, which is technically an election offense. When Atty. Ramos of the COMELEC-Cabanatuan and P/Supt. Cruz allegedly failed to act on the matter, petitioner went to the COMELEC. We observe, however, that petitioner, from the start, failed to avail himself of the proper procedure. Rule 34[30] of the 1993 COMELEC Rules of Procedure clearly lays down the legal steps in the prosecution of election offenses. In *Laurel v. Presiding Judge, RTC-Manila, Br. 10*,[31] we applied the aforementioned rule. For purposes of clarity, we enumerate the lapses of petitioner, who, perhaps due to the lack of assistance of a lawyer, failed to follow the rules.

First, when petitioner reported to Atty. Ramos and to P/Supt. Cruz the alleged illegally posted campaign materials, his respective letter-complaints to them were unverified and the same appeared not to have been supported by affidavits and other evidence as required by the COMELEC Rules.

Second, when the complaint was not acted upon by Atty. Ramos and P/Supt. Cruz, petitioner did not file a verified complaint with the COMELEC Law Department.

Third, in his petition filed with the COMELEC, petitioner sought the annulment of the proclamation of all respondents instead of asking for a preliminary investigation and the eventual prosecution of said election offense. It is obvious that because of the relief sought, the COMELEC treated petitioner's case as a pre-proclamation controversy when, as to law,[32] the grounds relied upon were not at all proper grounds thereof.

Thus, since his petition was in the nature of a pre-proclamation contest not anchored on the exclusive issues that may be raised in a pre-proclamation contest under Section 243 of the Omnibus Election Code, the COMELEC properly dismissed the same by not including it in the list of cases that would remain active beyond June 30, 2007.

Well-entrenched in this jurisdiction is the principle that the office of a petition for certiorari is not the correction of simple errors of judgment but capricious and whimsical exercise of judgment amounting to lack of jurisdiction, or arbitrary and despotic exercise of power because of passion or personal hostility.[33] In this regard, the COMELEC did not commit grave abuse of discretion in treating petitioner's case as a pre-proclamation controversy and in excluding the same, due to lack of merit, from the list annexed to Resolution No. 8212. This is consistent with the policy that pre-proclamation controversies should be summarily decided, consonant with the law's desire that the canvass and proclamation be delayed as little as possible.[34] In the present case, the petition does not, in fact, ascribe grave abuse of discretion nor does it sufficiently show that the COMELEC gravely abused its discretion in excluding his case from the list of those that shall continue. Apart from petitioner's bare allegations, the record is bereft of any evidence to prove that petitioner's pre-proclamation case appears meritorious and warrants the annulment of the proclamation of Vergara as elected mayor of the city and of other respondents who were likewise elected and proclaimed but were not impleaded herein with particularity.

However, as a Court of justice and equity, we cannot simply brush aside Atty. Ramos' failure to exercise his duty under Section 4(c), Rule 34 of the 1993 COMELEC Rules of Procedure. Atty. Ramos apparently failed to furnish the Director of the COMELEC Law Department a copy of petitioner's complaint, as required in Section 4(b), Rule 34 of the COMELEC Rules of Procedure. He should be made to explain why he ignored the complaint and breached the COMELEC Rules of Procedure. As to the petitioner, considering that election offenses prescribe in four (4) years, he may still file or revive his complaint, following COMELEC rules.

On the assailed Order, dated October 18, 2007, of the COMELEC Second Division, it is well to note that it did not dismiss petitioner's case. It merely forwarded the original case folder to the Clerk of the COMELEC. As already mentioned, what actually dismissed petitioner's case was Resolution No. 8212 issued by the COMELEC en banc. Inasmuch as one of the duties of the Clerk of the COMELEC is to keep and secure all records, papers, files, exhibits, the office seal and other public property committed to his charge,[35] no grave abuse of discretion may be imputed to the COMELEC Second Division when it issued the assailed Order because the same merely directed that the original case folder of petitioner's case be forwarded to the Clerk of the COMELEC -- an act administrative in nature which does not involve an exercise of discretion.

In light of the foregoing discussion, the instant petition has no leg to stand on.

Admittedly, the advent of COMELEC Resolution No. 8212 caused a measure of confusion among party litigants and even among lawyers. This is the reason why, in *Patalinghug v. Commission on Elections*,[36] we took the opportunity, for the guidance of the members of the bench and bar, to set the following guidelines:

First, if a pre-proclamation case is excluded from the list of those (annexed to the Omnibus Resolution on Pending Cases) that shall continue after the beginning of the term of the office involved, the remedy of the aggrieved party is to timely file a certiorari petition assailing the Omnibus Resolution before the Court under Rules 64 and 65, regardless of whether a COMELEC division is yet to issue a definitive ruling in the main case or the COMELEC en banc is yet to act on a motion for reconsideration filed if there is any.

It follows that if the resolution on the motion for reconsideration by the banc precedes the exclusion of the said case from the list, what should be brought before the Court on certiorari is the decision resolving the motion.

Second, if a pre-proclamation case is dismissed by a COMELEC division and, on the same date of dismissal or within the period to file a motion for reconsideration, the COMELEC en banc excluded the said case from the list annexed to the Omnibus Resolution, the remedy of the aggrieved party is also to timely file a certiorari petition assailing the Omnibus Resolution before the Court under Rules 64 and 65. The aggrieved party need no longer file a motion for reconsideration of the division ruling.

The rationale for this is that the exclusion by the COMELEC en banc of a pre-proclamation case from the list of those that shall continue is already deemed a final dismissal of that case not only by the division but also by the COMELEC en banc. As already explained earlier, the aggrieved party can no longer expect any favorable ruling from the COMELEC.

And third, if a pre-proclamation case is dismissed by a COMELEC division but, on the same date of dismissal or within the period to file a motion for reconsideration, the COMELEC en banc included the case in the list annexed to the Omnibus Resolution, the remedy of the aggrieved party is to timely file a motion for reconsideration with the COMELEC en banc. The reason for this is that the challenge to the ruling of the COMELEC division will have to be resolved definitively by the entire body.[37]

These guidelines - and Section 16, R.A. No. 7166 - notwithstanding, we are constrained to express the view that the COMELEC should rule on pre-proclamation cases individually, even if the ruling is simply couched in a minute resolution. This will dispel qualms about lack of adequate notice to party litigants, and obviate the

confusion that generally results from the issuance of omnibus resolutions. In all, such a practice would be consistent with the constitutional principle of transparency, and lend itself to greater public confidence in our electoral system.

In the case at bar, the petitioner may have been equally confused on the remedies available to him vis-à-vis Resolution No. 8212. We do not fault him for this, but we nonetheless dismiss his petition because we find no grave abuse of discretion in the assailed COMELEC Resolution and Order.

WHEREFORE, the instant petition is DISMISSED. No costs.

SO ORDERED.

Quisumbing, Acting C.J., Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Tinga, Chico-Nazario, Velasco, Jr., Leonardo-De Castro, Brion, and Peralta, JJ., concur.

Puno, C.J., on official leave

[*] Petitioner failed to properly and particularly implead all the respondents in this case. However, per Reply of the petitioner dated July 22, 2008 (rollo, pp. 169-184, at 170), he manifested that he was not merely charging respondents Alvin P. Vergara and COMELEC officer Atty. Harold A. Ramos but also all other elected and defeated candidates, party mates and their respective supporters, and all deputized personnel and agents of the COMELEC who caused and/or allowed the posting and installation of illegal propaganda materials within the designated polling places of Cabanatuan City.

[1]Rollo, pp. 3-9.

[2]Id. at 64-66.

[3]Id. at 69-79.

[4]Id. at 11-12.

[5]Id. at 15.

[6] Id. at 16.

[7] Id. at 17-52.

[8] Id. at 53.

[9] Id. at 13-14.

[10] Sec. 16 of R.A. No. 7166 reads:

SECTION 16. Pre-proclamation Cases Involving Provincial, City and Municipal Offices. — Pre-proclamation cases involving provincial, city and municipal offices shall be allowed and shall be governed by Sections 17, 18, 19, 20, 21 and 22 hereof.

All pre-proclamation cases pending before the Commission shall be deemed terminated at the beginning of the term of the office involved and the rulings of the boards of canvassers concerned shall be deemed affirmed, without prejudice to the filing of a regular election protest by the aggrieved party. However, proceedings may continue when on the basis of the evidence thus far presented, the Commission determines that the petition appears meritorious and accordingly issues an order for the proceeding to continue or when an appropriate order has been issued by the Supreme Court in a petition for certiorari. (Emphasis supplied.)

[11] Rollo, pp. 186-187.

[12] Reply dated July 22, 2008; id. at 169-184.

[13] Id. at 54-55.

[14] Id. at 57-59.

[15] Id. at 60-63.

[16] Affidavit of Service dated January 17, 2008; id. at 109.

[17] Petitioner's Memorandum dated November 6, 2008; id. at 215-238.

[18] Id.

[19] Vergara's Comment dated February 12, 2008; id. at 125- 133.

[20] Sec. 7, Art. IX-A of the Constitution reads:

Sec. 7. Each Commission shall decide by a majority vote of all its Members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof.

[21] OSG's Memorandum dated November 14, 2008; rollo, unpagd.

[22] Supra note 10.

[23] Cipriano v. Commission on Elections, 479 Phil. 677, 691 (2004).

[24] Sec. 2, Rule 64 of the Rules of Court provides:

SEC. 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. (Emphasis supplied.)

[25] Sec. 3, Rule 64 of the Rules of Court reads:

SEC. 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.

[26] 460 Phil. 459 (2003), citing *Angelia v. Commission on Elections*, 388 Phil. 560, 566 (2000).

[27] Id. at 472-473.

[28] *Audi AG v. Mejia*, G.R. No. 167533, July 27, 2007, 528 SCRA 378, 385. (Citations omitted.)

[29] *Zacate v. Commission on Elections*, 405 Phil. 960, 972-973 (2001).

[30] Rule 34 of the 1993 COMELEC Rules of Procedure provides:

Rule 34 - Prosecution of Election Offenses

SECTION 1. Authority of the Commission to Prosecute Election Offenses. — The Commission shall have the exclusive power to conduct preliminary investigation of all election offenses punishable under the election laws and to prosecute the same, except as may otherwise be provided by law.

SEC. 2. Continuing Delegation of Authority to Other Prosecution Arms of the Government. — The Chief State Prosecutor, all Provincial and City Fiscals, and/or their respective assistants are hereby given continuing authority, as deputies of the Commission, to conduct preliminary investigation of complaints involving election offenses under the election laws which may be filed directly with them, or which may be indorsed to them by the Commission or its duly authorized representatives and to prosecute the same. Such authority may be revoked or withdrawn any time by the Commission whenever in its judgment such revocation or withdrawal is necessary to protect the integrity of the Commission, promote the common good, or when it believes that successful prosecution of the case can be done by the Commission.

SEC. 3. Initiation of Complaint. — Initiation of complaint for election offenses may be done motu proprio by the Commission, or upon written complaint by any citizen of the Philippines, candidate, registered political party, coalition of political parties or organizations under the party-list system or any accredited citizens' arms of the Commission.

SEC. 4. Form of Complaint and Where to File. — (a) When not initiated motu proprio by the Commission, the complaint must be verified and supported by affidavits and/or any other evidence. Motu proprio complaints may be signed by the Chairman of the Commission, or the Director of the Law Department upon direction of the Chairman, and need not be verified;

(b) The complaint shall be filed with the Law Department of the Commission; or with the offices of the Election Registrars, Provincial Election Supervisors or Regional Election Directors, or the State Prosecutor, Provincial Fiscal or City Fiscal. If filed with any of the latter three (3) officials, investigation thereof may be delegated to any of their assistants;

(c) If filed with the Regional Election Directors or Provincial Election Supervisors, said officials shall immediately furnish the Director of the Law Department a copy of the complaint and the supporting documents, and inform the latter of the action taken thereon.

SEC. 5. Referral for Preliminary Investigation. — If the complaint is initiated motu proprio by the Commission, or is filed with the Commission by any aggrieved party, it shall be referred to the Law Department for investigation. Upon direction of the Chairman of the Commission, the preliminary investigation may be delegated to any lawyer of said Department, or to any of the Regional Election Directors or Provincial Election Supervisors, or any lawyer of the Commission.

SEC. 6. Conduct of Preliminary Investigation. — (a) If on the basis of the complaint, affidavits and the supporting evidence, the investigating officer finds no ground to continue with the inquiry, he shall recommend the dismissal of the complaint and shall follow the procedure prescribed in Section 8(c) of this Rule. Otherwise, he shall issue a subpoena to the respondent, attaching thereto a copy of the complaint, affidavits and other supporting documents giving said respondent ten (10) days from receipt within which to submit counter-affidavits and other supporting documents. The respondent shall have the right to examine all other evidence submitted by the complainant.

(b) Such counter-affidavits and other supporting evidence submitted by the respondent shall be furnished by him to the complainant.

(c) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten-day period, the investigating officer shall base his resolution on the evidence presented by the complainant.

(d) If the investigating officer believes that there are matters to be clarified, he may set a hearing to propound clarificatory questions to the parties or their witnesses, during which the parties shall be afforded an opportunity to be present but without the right to examine or cross-examine. If the parties so desire, they may submit questions to the investigating officer which the latter may propound to the parties or witnesses concerned.

(e) Thereafter, the investigation shall be deemed concluded, and the investigating officer shall resolve the case within ten (10) days therefrom. Upon the evidence thus adduced, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

SEC. 7. Presumption of Existence of Probable Cause. — A complaint initiated motu proprio by the Commission is presumed to be based on sufficient probable cause and the investigating officer must forthwith issue the subpoena mentioned in the immediately preceding section.

SEC. 8. Duty of Investigating Officer. — The preliminary investigation must be terminated within twenty (20) days after receipt of the counter-affidavits and other evidence of the respondents, and resolution thereof shall be made within five (5) days thereafter.

(a) If the investigating officer finds no cause to hold the respondent for trial, he shall recommend dismissal of the complaint.

(b) If the investigating officer finds cause to hold the respondent for trial, he shall prepare the resolution, and the corresponding information wherein he shall certify under oath that he has examined the complainant and his witnesses, that there is reasonable ground to believe that a crime has been committed and 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.

(c) In either case, the investigating officer shall, within five (5) days from the rendition of his recommendation, forward the records of the case to

1) The Director of the Law Department of the Commission in cases investigated by any of the Commission lawyers or field personnel, and

2) The State Prosecutor, Provincial Fiscal or City Fiscal, as the case may be, pursuant to the continuing authority provided for in Section 2 of this Rule.

SEC. 9. Duty of the Law Department, State Prosecutor, Provincial or City Fiscal Upon Receipt of Records. — (a) Within ten (10) days from receipt of the records stated in paragraph (c) of the immediately preceding section, the State Prosecutor, Provincial or City Fiscal shall take appropriate action thereon, immediately informing the parties of said action.

(b) In cases investigated by the lawyers or the field personnel of the Commission, the Director of the Law Department shall review and evaluate the recommendation of said legal officer, prepare a report and make a recommendation to the Commission affirming, modifying or reversing the same shall be included in the agenda of the succeeding meeting en banc of the Commission. If the Commission approves the filing of an information in court against the respondent/s, the Director of the Law Department shall prepare and sign the information for immediate filing with the appropriate court.

(c) In all other cases, if the recommendation to dismiss or the resolution to file the case in court is approved by State Prosecutor, Provincial or City Fiscal, they shall likewise approve the Information prepared and immediately

cause its filing with the proper court.

(d) If the recommendation to dismiss is reversed on the ground that a probable cause exists, the State Prosecutor, or the Provincial or City Fiscal, may, by himself prepare and file the corresponding information against the respondent or direct any of his assistants to do so without conducting another preliminary investigation.

SEC. 10. Appeals from the Action of the State Prosecution, Provincial or City Fiscal. — Appeals from the resolution of the State Prosecutor, or Provincial or City Fiscal on the recommendation or resolution of investigating officers may be made only to the Commission within ten (10) days from receipt of the resolution of said officials, provided, however that this shall not divest the Commission of its power to motu proprio review, revise, modify or reverse the resolution of the chief state prosecutor and/or provincial/city prosecutors. The decision of the Commission on said appeals shall be immediately executory and final.

SEC. 11. Duty of State Prosecutor, Provincial or City Fiscal to Render Reports. — The State Prosecutor, Provincial or City Fiscal shall, within five (5) days from the rendition of their resolution on recommendation or resolution of investigating officers, make a written report thereof to the Commission. They shall likewise submit a monthly report on the status of cases filed with and/or prosecuted by them or any of their assistants pursuant to the authority granted them under Section 2 of this Rule.

SEC. 12. Private Prosecutor. — The appearance of a private prosecutor shall be allowed in cases where private rights involving recovery of civil liability are involved.

[31] G.R. No. 131778, January 28, 2000, 323 SCRA 778.

[32] Sec. 243 of Batas Pambansa Blg. 881 or the Omnibus Election Code provides:

SECTION 243. Issues that may be raised in pre-proclamation controversy. — The following shall be proper issues that may be raised in a pre-proclamation controversy:

- (a) Illegal composition or proceedings of the board of canvassers;
- (b) The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235 and 236 of this Code;
- (c) The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and
- (d) When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.

[33] *Pedragoza v. Commission on Elections*, G.R. No. 169885, July 25, 2006, 496 SCRA 513, 524, citing *Navarosa v. Commission on Elections*, 411 SCRA 369, 386 (2003).

[34] *Dimaporo v. Commission on Elections*, G.R. No. 179285, February 11, 2008, 544 SCRA 381, 391, citing *Sanchez v. Commission on Elections*, 153 SCRA 67, 75 (1987).

[35] 1993 COMELEC Rules of Procedure, Rule 38, Sec. 2.

[36] G.R. No. 178767, January 30, 2008, 543 SCRA 175.

[37] *Id.* at 186-187. (Underlining supplied.)

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