

**[ SEC, July 15, 1999 ]**

**NEW RULES OF PROCEDURE OF THE SECURITIES AND EXCHANGE COMMISSION**

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.

*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.

### 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:

- a. Motion to dismiss the complaint;
- b. Motion for a bill of particulars;
- c. Motion for new trial or for reconsideration of judgment or order, or for reopening of trial;
- d. Petition for relief from judgment;
- e. Motion for extension of time to file pleadings, affidavits or any other paper;
- f. Memoranda;
- g. Motion to declare the defendant in default;
- h. Motion for Postponement;
- i. Supplemental pleadings; and
- j. 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.

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