

A.M. No. 01-2-04-SC. March 13, 2001

**Re: PROPOSED INTERIM RULES OF PROCEDURE GOVERNING
INTRA-CORPORATE CONTROVERSIES UNDER R. A. NO. 8799**

RESOLUTION

INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES

**RULE 1
GENERAL PROVISIONS**

SECTION 1. (a) Cases covered. – These Rules shall govern the procedure to be observed in civil cases involving the following:

1. Devices or schemes employed by, or any act of, the board of directors, business associates, officers or partners, amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, or members of any corporation, partnership, or association;
2. Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders, members, or associates; and between, any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively;
3. Controversies in the election or appointment of directors, trustees, officers, or managers of corporations, partnerships, or associations;
4. Derivative suits; and
5. Inspection of corporate books.

(b) prohibition against nuisance and harassment suits. - Nuisance and harassment suits are prohibited. In determining whether a suit is a nuisance or harassment suit, the court shall consider, among others, the following:

1. The extent of the shareholding or interest of the initiating stockholder or member;
2. Subject matter of the suit;
3. Legal and factual basis of the complaint;
4. Availability of appraisal rights for the act or acts complained of; and
5. Prejudice or damage to the corporation, partnership, or association in relation to the relief sought.

In case of nuisance or harassment suits, the court may, *moto proprio* or upon motion, forthwith dismiss the case.

SEC. 2. Suppletory application of the Rules of Court. – The Rules of Court, in so far as they may be applicable and are not inconsistent with these Rules, are hereby adopted to form an integral part of these Rules.

SEC. 3. Construction. – These Rules shall be liberally construed in order to promote their objective of securing a just, summary, speedy and inexpensive determination of every action or proceeding.

SEC. 4. Executory nature of decisions and orders. – All decisions and orders issued under these Rules shall immediately be executory. No appeal or petition taken therefrom shall stay the enforcement or implementation of the decision or order, unless restrained by an appellate court. Interlocutory orders shall not be subject to appeal.

SEC. 5. Venue. – All actions covered by these Rules shall be commenced and tried in the Regional Trial Court which has jurisdiction over the principal office of the corporation, partnership, or association concerned. Where the principal office of the corporation, partnership or association is registered in the Securities and Exchange Commission as Metro Manila, the action must be filed in the city or municipality where the head office is located.

SEC. 6. Service of pleadings. – When so authorized by the court, any pleading and/or document required by these Rules may be filed with the court and/or served upon the other parties by facsimile transmission (fax) or electronic mail (e-mail). In such cases, the date of transmission shall be deemed to be *prima facie* the date of service.

SEC. 7. Signing of pleadings, motions and other papers. – Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the pleading, motion, or other paper and state his address.

The signature of an attorney or party constitutes a certification by the signer that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing jurisprudence; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

If a pleading, motion, or other paper is not signed, it shall be stricken off the record unless it is promptly signed by the pleader or movant, after he is notified of the omission.

SEC. 8. Prohibited pleadings. – The following pleadings are prohibited:

1. Motion to dismiss;
2. Motion for a bill of particulars;
3. Motion for new trial, or for reconsideration of judgment or order, or for re-opening of trial;
4. Motion for extension of time to file pleadings, affidavits or any other paper, except those filed due to clearly compelling reasons. Such motion must be verified and under oath; and
5. Motion for postponement and other motions of similar intent, except those filed due to clearly compelling reasons. Such motion must be verified and under oath.

SEC. 9. *Assignment of cases.* – All cases filed under these Rules shall be tried by judges designated by the Supreme Court to hear and decide cases transferred from the Securities and Exchange Commission to the Regional Trial Courts and filed directly with said courts pursuant to Republic Act No. 8799, otherwise known as the Securities and Regulation Cod

RULE 2 COMMENCEMENT OF ACTION AND PLEADINGS

SECTION 1. *Commencement of action.* – An action under these Rules is commenced by the filing of a verified complaint with the proper Regional Trial Court.

SEC. 2. *Pleadings allowed.* – The only pleadings allowed to be filed under these Rules are the complaint, answer, compulsory counterclaims or cross-claims pleaded in the answer, and the answer to the counterclaims or cross-claims.

SEC. 3. *Verification.* – The complaint and the answer shall be verified by an affidavit stating that the affiant has read the pleading and the allegations therein are true and correct based on his own personal knowledge or on authentic records.

SEC. 4. *Complaint.* – The complaint shall state or contain:

1. the names, addresses, and other relevant personal or juridical circumstances of the parties;
2. all facts material and relevant to the plaintiff's cause or causes of action, which shall be supported by affidavits of the plaintiff or his witnesses and copies of documentary and other evidence supportive of such cause or causes of action;
3. the law, rule, or regulation relied upon, violated, or sought to be enforced;
4. a certification that (a) the plaintiff has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency, and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court; and
5. the relief sought.

SEC. 5. *Summons.* – The summons and the complaint shall be served together not later than five (5) days from the date of filing of the complaint.

- a. *Service upon domestic private juridical entities.* – If the defendant is a domestic corporation, service shall be deemed adequate if made upon any of the statutory or corporate officers as fixed by the by-laws or their respective secretaries. If the defendant is a partnership, service shall be deemed adequate if made upon any of the managing or general partners or upon their respective secretaries. If the defendant is an association, service shall be deemed adequate if made upon any of its officers or their respective secretaries.

- b. *Service upon foreign private juridical entity.* – When the defendant is a foreign private juridical entity which is transacting or has transacted business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines.

SEC. 6. Answer. – The defendant shall file his answer to the complaint, serving a copy thereof on the plaintiff, within fifteen (15) days from service of summons.

In the answer, the defendant shall:

1. Specify each material allegation of fact the truth of which he admits;
2. Specify each material allegation of fact the truth of which he does not admit. Where the defendant desires to deny only a part of an averment, he shall specify so much of it as true and material and shall deny only the remainder;
3. Specify each material allegation of fact as to which truth he has no knowledge or information sufficient to form a belief, and this shall have the effect of a denial;
4. State the defenses, including grounds for a motion to dismiss under the Rules of Court;
5. State the law, rule, or regulation relied upon;
6. Address each of the causes of action stated in the complaint;
7. State the facts upon which he relies for his defense, including affidavits of witnesses and copies of documentary and other evidence supportive of such cause or causes of action;
8. State any compulsory counterclaim/s and cross-claim/s; and
9. State the relief sought.

The answer to counterclaims or cross-claims shall be filed within ten (10) days from service of the answer in which they are pleaded.

SEC. 7. Effect of failure to answer. – If the defendant fails to answer within the period above provided, he shall be considered in default. Upon motion or *motu proprio*, the court shall render judgment either dismissing the complaint or granting the relief prayed for as the records may warrant. In no case shall the court award a relief beyond or different from that prayed for.

SEC. 8. Affidavits, documentary and other evidence. – Affidavits shall be based 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. The affidavits shall be in question and answer form, and shall comply with the rules on admissibility of evidence.

Affidavits of witnesses as well as documentary and other evidence shall be attached to the appropriate pleading; Provided, however, that affidavits, documentary and other evidence not so submitted may be attached to the pre-trial brief required under these Rules. Affidavits and other evidence not so submitted shall not be admitted in evidence, except in the following cases:

1. Testimony of unwilling, hostile, or adverse party witnesses. A witness is presumed *prima facie* hostile if he fails or refuses to execute an affidavit after a written request therefor;
2. If the failure to submit the evidence is for meritorious and compelling reasons; and

3. Newly discovered evidence.

In case of (2) and (3) above, the affidavit and evidence must be submitted not later than five (5) days prior to its introduction in evidence.

RULE 3 MODES OF DISCOVERY

SECTION 1. *In general.* – A party can only avail of any of the modes of discovery not later than fifteen (15) days from the joinder of issues.

SEC. 2. *Objections.* – Any mode of discovery such as interrogatories, request for admission, production or inspection of documents or things, may be objected to within ten (10) days from receipt of the discovery device and only on the ground that the matter requested is patently incompetent, immaterial, irrelevant or privileged in nature.

The court shall rule on the objections not later than fifteen (15) days from the filing thereof.

SEC. 3. *Compliance.* – Compliance with any mode of discovery shall be made within ten (10) days from receipt of the discovery device, or if there are objections, from receipt of the ruling of the court.

SEC. 4. *Sanctions.* – The sanctions prescribed in the Rules of Court for failure to avail of, or refusal to comply with, the modes of discovery shall apply. In addition, the court may, upon motion, declare a party non-suited or as in default, as the case may be, if the refusal to comply with a mode of discovery is patently unjustified.

RULE 4 PRE-TRIAL

SECTION 1. *Pre-trial conference; mandatory nature.* – Within five (5) days after the period for availment of, and compliance with, the modes of discovery prescribed in Rule 3 hereof, whichever comes later, the court shall issue and serve an order immediately setting the case for pre-trial conference and directing the parties to submit their respective pre-trial briefs. The parties shall file with the court and furnish each other copies of their respective pre-trial brief in such manner as to ensure its receipt by the court and the other party at least five (5) days before the date set for the pre-trial.

The parties shall set forth in their pre-trial briefs, among other matters, the following:

1. Brief statement of the nature of the case, which shall summarize the theory or theories of the party in clear and concise language;
2. Allegations expressly admitted by either or both parties;
3. Allegations deemed admitted by either or both parties;
4. Documents not specifically denied under oath by either or both parties;
5. Amendments to the pleadings;

6. Statement of the issues, which shall separately summarize the factual and legal issues involved in the case;
7. Names of witnesses to be presented and the summary of their testimony as contained in their affidavits supporting their positions on each of the issues;
8. All other pieces of evidence, whether documentary or otherwise and their respective purposes;
9. Specific proposals for an amicable settlement;
10. Possibility of referral to mediation or other alternative modes of dispute resolution;
11. Proposed schedule of hearings; and
12. Such other matters as may aid in the just and speedy disposition of the case.

SEC. 2. *Nature and purpose of pre-trial conference.* – During the pre-trial conference, the court shall, with its active participation, ensure that the parties consider in detail all of the following:

1. The possibility of an amicable settlement;
2. Referral of the dispute to mediation or other forms of dispute resolution;
3. Facts that need not be proven, either because they are matters of judicial notice or expressly or deemed admitted;
4. Amendments to the pleadings;
5. The possibility of obtaining stipulations and admissions of facts and documents;
6. Objections to the admissibility of testimonial, documentary and other evidence;
7. Objections to the form or substance of any affidavit, or part thereof;
8. Simplification of the issues;
9. The possibility of submitting the case for decision on the basis of position papers, affidavits, documentary and real evidence;
10. A complete schedule of hearing dates; and
11. Such other matters as may aid in the speedy and summary disposition of the case.

SEC. 3. *Termination.* – The preliminary conference shall be terminated not later than ten (10) days after its commencement, whether or not the parties have agreed to settle amicably.

SEC. 4. *Judgment before pre-trial.* – If, after submission of the pre-trial briefs, the court determines that, upon consideration of the pleadings, the affidavits and other evidence submitted by the parties, a judgment may be rendered, the court may order the parties to file simultaneously their respective memoranda within a non-extendible period of twenty (20) days from receipt of the order. Thereafter, the court shall render judgment, either full or otherwise, not later than ninety (90) days from the expiration of the period to file the memoranda.

SEC. 5. *Pre-trial order; judgment after pre-trial.* – The proceedings in the pre-trial shall be recorded. Within ten (10) days after the termination of the pre-trial, the court shall issue an order which shall recite in detail the matters taken up in the conference, the actions taken thereon, the amendments allowed in the pleadings, and the agreements or admissions made by the parties as to any of the matters considered. The court shall rule on all objections to or comments on the admissibility of any documentary or other evidence, including any affidavit or any part thereof. Should the action proceed to trial, the order shall explicitly define and limit the issues to be tried and shall strictly follow the form set forth in Annex "A" of these Rules.

The contents of the order shall control the subsequent course of the action, unless modified before trial to prevent manifest injustice.

After the pre-trial, the court may render judgment, either full or partial, as the evidence presented during the pre-trial may warrant.

RULE 5 TRIAL

SECTION 1. *Witnesses.* – If the court deems necessary to hold hearings to determine specific factual matters before rendering judgment, it shall, in the pre-trial order, set the case for trial on the dates agreed upon by the parties.

Only persons whose affidavits were submitted may be presented as witnesses, except in cases specified in section 8, Rule 2 of these Rules. The affidavits of the witnesses shall serve as their direct testimonies, subject to cross-examination in accordance with existing rules on evidence.

SEC. 2. *Trial schedule.* – Unless judgment is rendered pursuant to Rule 4 of these Rules, the initial hearing shall be held not later than thirty (30) days from the date of the pre-trial order. The hearings shall be completed not later than sixty (60) days from the date of the initial hearing, thirty (30) days of which shall be allotted to the plaintiffs and thirty (30) days to the defendants in the manner prescribed in the pre-trial order. The failure of a party to present a witness on a scheduled hearing date shall be deemed a waiver of such hearing date. However, a party may present such witness or witnesses within his remaining allotted hearing dates.

SEC. 3. *Written offer of evidence.* – Evidence not otherwise admitted by the parties or ruled upon by the court during the pre-trial conference shall be offered in writing not later than five (5) days from the completion of the presentation of evidence of the party concerned. The opposing party shall have five (5) days from receipt of the offer to file his comments or objections. The court shall make its ruling on the offer within five (5) days from the expiration of the period to file comments or objections.

SEC. 4. *Memoranda.* – Immediately after ruling on the last offer of evidence, the court shall order the parties to simultaneously file, within thirty (30) days from receipt of the order, their respective memoranda. The memoranda shall contain the following:

1. A "Statement of the Case," which is a clear and concise statement of the nature of the action and a summary of the proceedings;
2. A "Statement of the Facts," which is a clear and concise statement in narrative form of the established facts, with reference to the testimonial, documentary or other evidence in support thereof;
3. A "Statement of the issues," which is a clear and concise statement of the issues presented to the court for resolution;
4. The "Arguments," which is a clear and concise presentation of the argument in support of each issue; and

5. The "Relief," which is a specification of the order or judgment which the party seeks to obtain.

No reply memorandum shall be allowed.

SEC. 5. *Decision after trial.* – The court shall render a decision not later than (90) days from the lapse of the period to file the memoranda, with or without said pleading having been filed.

RULE 6 ELECTION CONTESTS

SECTION 1. *Cases covered.* – The provisions of this rule shall apply to election contests in stock and non-stock corporations.

SEC. 2. *Definition.* – An election contest refers to any controversy or dispute involving title or claim to any elective office in a stock or non-stock corporation, the validation of proxies, the manner and validity of elections, and the qualifications of candidates, including the proclamation of winners, to the office of director, trustee or other officer directly elected by the stockholders in a close corporation or by members of a non-stock corporation where the articles of incorporation or by-laws so provide.

SEC. 3. *Complaint.* – In addition to the requirements in section 4, Rule 2 of these Rules, the complaint in an election contest must state the following:

1. The case was filed within fifteen (15) days from the date of the election if the by-laws of the corporation do not provide for a procedure for resolution of the controversy, or within fifteen (15) days from the resolution of the controversy by the corporation as provided in its by-laws; and
2. The plaintiff has exhausted all intra-corporate remedies in election cases as provided for in the by-laws of the corporation.

SEC. 4. *Duty of the court upon the filing of the complaint.* – Within two (2) days from the filing of the complaint, the court, upon a consideration of the allegations thereof, may dismiss the complaint outright if it is not sufficient in form and substance, or, if it is sufficient, order the issuance of summons which shall be served, together with a copy of the complaint, on the defendant within two (2) days from its issuance.

SEC. 5. *Answer.* – The defendant shall file his answer to the complaint, serving a copy thereof on the plaintiff, within ten (10) days from service of summons and the complaint. The answer shall contain the matters required in section 6, Rule 2 of these Rules.

SEC. 6. *Affidavits, documentary and other evidence.* – The parties shall attach to the complaint and answer the affidavits of witnesses, documentary and other evidence in support thereof, if any.

Acting on the Memorandum of the Committee on SEC Cases submitting for this Court's consideration and approval the Proposed Interim Rules of Procedure for Intra-Corporate Controversies, the Court Resolved to **APPROVE** the same.

The Interim Rules shall take effect on April 1, 2001 following its publication in two (2) newspapers of general circulation.

March 13, 2001, Manila.

(SGD.) HILARIO G. DAVIDE, JR.

Chief Justice

**(SGD.) JOSUE N.
BELLOSILLO**

Associate Justice

(SGD.) REYNATO S. PUNO

Associate Justice

**(SGD.) SANTIAGO M.
KAPUNAN**

Associate Justice

**(SGD.) ARTEMIO V.
PANGANIBAN**

Associate Justice

**(SGD.) BERNARDO P.
PARDO**

Associate Justice

**(SGD.) MINERVA P.
GONZAGA-REYES**

Associate Justice

**(SGD.) SABINO R. DE LEON,
JR.**

Associate Justice

(SGD.) JOSE A.R. MELO

Associate Justice

(SGD.) JOSE C. VITUG

Associate Justice

**(SGD.) VICENTE V.
MENDOZA**

Associate Justice

**(SGD.) LEONARDO A.
QUISUMBING**

Associate Justice

(SGD.) ARTURO B. BUENA

Associate Justice

**(SGD.) CONSUEUO
YNARES-SANTIAGO**

Associate Justice

**(SGD.) ANGELINA
SANDOVAL-GUTIERREZ**

Associate Justice