PART III

CRIMINAL PROCEDURE[1]

RULE 110

PROSECUTION OF OFFENSES

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

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

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

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

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

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

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

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

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

The offenses of seduction, abduction and acts of lasciviousness shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents or

guardian, nor, in any case, if the offender has been expressly pardoned by any of them. If the offended party dies or becomes incapacitated before she can file the complaint, and she has no known parents, grandparents or guardian, the State shall initiate the criminal action in her behalf.

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

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

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

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

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

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

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

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

SEC. 9. *Cause of the accusation.*—The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute, but in terms sufficient to enable a person of common understanding to know what offense is being

charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment. (9a)

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

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

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

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

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

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

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

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

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

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with section 19, Rule 119,

provided the accused shall not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial. (14a)

SEC. 15. *Place where action is to be instituted.*—

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

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

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

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

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

RULE 111

PROSECUTION OF CIVIL ACTION

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

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

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

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

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

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

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

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

Where the civil action has been filed separately and trial thereof has not yet commenced, it may be consolidated with the criminal action upon application with the court trying the latter case. If the application is granted, the trial of both actions shall proceed in accordance with section 2 of this Rule governing consolidation of the civil and criminal actions. (cir. 57-97)

SEC. 2. *When separate civil action is suspended.*—After the criminal action has been commenced, the separate civil action arising therefrom cannot be instituted until final judgment has been entered in the criminal action.

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

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

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

SEC. 3. *When civil action may proceed independently.*—In the cases provided in Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines, the independent civil action may be brought by the offended party. It shall proceed independently of the criminal action and shall require only a preponderance of evidence. In no case, however, may the offended party recover damages twice for the same act or omission charged in the criminal action. (3a)

SEC. 4. *Effect of death on civil actions.*—The death of the accused after arraignment and during the pendency of the criminal action shall extinguish the civil liability arising from the delict.

However, the independent civil action instituted under section 3 of this Rule or which thereafter is instituted to enforce liability arising from other sources of obligation may be continued against the estate or legal representative of the accused after proper substitution or against said estate, as the case may be. The heirs of the accused may be substituted for the deceased without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

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

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

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

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

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

RULE 112

PRELIMINARY INVESTIGATION

SECTION 1. *Preliminary investigation defined; when required.*—Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground

to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.

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

SEC. 2. *Officers authorized to conduct preliminary investigations.—*

The following may conduct preliminary investigations:

(a) Provincial or City Prosecutors and their assistants;

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

(c) National and Regional State Prosecutors; and

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

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

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

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

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

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

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

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and

certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant;. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

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

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

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

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

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

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

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

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

If upon petition by a proper party under such rules as the Department of Justice may prescribe or *motu proprio,* the Secretary of Justice reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor, he shall direct the prosecutor

concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties. The same rule shall apply in preliminary investigations conducted by the officers of the Office of the Ombudsman. (4a)

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

Within thirty (30) days from receipt of the records, the provincial or city prosecutor, or the Ombudsman or his deputy, as the case may be, shall review the resolution of the investigating judge on the existence of probable cause. Their ruling shall expressly and clearly state the facts and the law on which it is based and the parties shall be furnished with copies thereof. They shall order the release of an accused who is detained if no probable cause is found against him. (5a)

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

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

that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice.

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

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

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

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

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

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

SEC. 9. Cases not requiring a preliminary investigation nor covered by the Rule on Summary Procedure.—

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

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

RULE 113

ARREST

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

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

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

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

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

SEC. 5. *Arrest without warrant; when lawful.*—A peace officer or a private person may, without a warrant, arrest a person:

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

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

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

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

SEC. 6. *Time of making arrest.*—An arrest may be made on any day and at any time of the day or night. (6)

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

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

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

SEC. 10. *Officer may summon assistance.*—An officer making a lawful arrest may orally summon as many persons as he deems necessary to assist him in effecting the arrest. Every person so summoned by an officer shall assist him in effecting the arrest when he can render such assistance without detriment to himself. (10a)

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

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

SEC. 13. *Arrest after escape or rescue.*—If a person lawfully arrested escapes or is rescued, any person may immediately pursue or retake him without a warrant at any time and in any place within the Philippines. (13)

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

RULE 114

BAIL

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

SEC. 2. *Conditions of the bail; requirements.*—All kinds of bail are subject to the following conditions:

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

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

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

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

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

SEC. 3. *No release or transfer except on court order or bail.*—No person under detention by legal process shall be released or transferred except upon order of the court or when he is admitted to bail. (3a)

SEC. 4. *Bail, a matter of right; exception.*—All persons in custody shall be admitted to bail as a matter of right, with sufficient sureties, or released on recognizance as prescribed by law or this Rule (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, or Municipal Circuit Trial

Court, and (b) before conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua,* or life imprisonment. (4a)

SEC. 5. *Bail, when discretionary.*—Upon conviction by the Regional Trial Court of an .offense not punishable by death, *reclusion perpetua,* or life imprisonment, admission to bail is discretionary. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.

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

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

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

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

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

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

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

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

SEC. 6. *Capital offense, defined.*—A capital offense is an offense which, under the law existing at the time of its commission and of the application for admission to bail, may be punished with death. (6a)

SEC. 7. *Capital offense or an offense punishable by reclusion perpetua or life imprisonment, not bailable.*—No person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution. (7a)

SEC. 8. *Burden of proof in bail application.*—At the hearing of an application for bail filed by a person who is in custody for the commission of an offense punishable by death, *reclusion perpetua,* or life imprisonment, the prosecution has the burden of showing that evidence of guilt is strong. The evidence presented during the bail hearing shall be considered automatically reproduced at the trial but, upon motion of either party, the

court may recall any witness for additional examination unless the latter is dead, outside the Philippines, or otherwise unable to testify. (8a)

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

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

(b) Nature and circumstances of the offense;

(c) Penalty for the offense charged;

(d) Character and reputation of the accused;

(e) Age and health of the accused;

(f) Weight of the evidence against the accused;

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

(h) Forfeiture of other bail;

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

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

Excessive bail shall not be required. (9a)

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

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

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

SEC. 12. *Qualifications of sureties in property bond.*—The qualifications of sureties in a property bond shall be as follows:

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

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

(c) If there are two or more sureties, each may justify in an amount less than that expressed in the undertaking but the aggregate of the justified sums must be equivalent to the whole amount of the bail demanded.

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

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

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

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

SEC. 16. *Bail, when not required; reduced bail or recognizance.*-—No bail shall be required when the law or these Rules so provide.

When a person has been in custody for a period equal to or more than the possible maximum imprisonment prescribed for the offense charged, he shall be released immediately, without prejudice to the continuation of the trial or the proceedings on appeal. If the maximum penalty to which the accused may be sentenced is *destierro,* he shall be released after thirty (30) days of preventive imprisonment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RULE 115

RIGHTS OF ACCUSED

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

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

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

(c) To be present and defend in person and by counsel at every stage of the proceedings, from arraignment to promulgation of the judgment. The accused may, however, waive his presence at the trial pursuant to the stipulations set forth in his tail, unless his presence is specifically ordered by the court for purposes of identification. The absence of the accused without justifiable cause at the trial of which he had notice shall be considered a waiver of his right to be present thereat. When an accused under custody escapes, he shall be deemed to have waived his right to be present on all subsequent trial dates until custody over him is regained. Upon motion, the accused may be allowed to defend himself in person when it sufficiently appears to the court that he can properly protect his rights without the assistance of counsel.

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

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

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

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

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

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

RULE 116

ARRAIGNMENT AND PLEA

SECTION 1. *Arraignment and plea; how made.*—

(a) The accused must be arraigned before the court where the complaint or information was filed or assigned for trial. The arraignment shall be made in open court by the judge or clerk by furnishing the accused with a copy of the complaint or

information, reading the same in the language or dialect known to him, and asking him whether he pleads guilty or not guilty. The prosecution may call at the trial witnesses other than those named in the complaint or information.

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

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

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

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

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

(g) Unless a shorter period is provided by special law or Supreme Court circular, the arraignment shall be held within thirty (30) days from the date the court acquires jurisdiction over the person of the accused. The time of the pendency of a motion to quash or for a bill of particulars or other causes justifying suspension of the arraignment shall be excluded in computing the period, (sec. 2, cir. 38-98)

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

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

SEC. 4. *Plea of guilty to non-capital offense; reception of evidence, discretionary.*—When the accused pleads guilty to a non-capital offense, the court may receive evidence from the parties to determine the penalty to be imposed. (4)

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

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

SEC. 7. *Appointment of counsel de oficio.*—The court, considering the gravity of the offense and the difficulty of the questions that may arise, shall appoint as counsel *de oficio* such members of the bar in good standing who, by reason of their experience and ability, can competently defend the accused. But in localities where such members of the bar are not available, the court may appoint any person, resident of the province and of good repute for probity and ability, to defend the accused. (7a)

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

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

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

SEC. 11. *Suspension of arraignment*.–Upon motion by the proper party, the arraignment shall be suspended in the following cases:

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

(b) There exists a prejudicial question; and

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

RULE 117

MOTION TO QUASH

SECTION 1. *Time to move to quash*.–At any time before entering his plea, the accused may move to quash the complaint for information. (1)

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

SEC. 3. *Grounds.*–The accused may move to quash the complaint or information on any of following grounds:

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

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

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

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

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

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

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

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

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

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

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

SEC. 5. *Effect of sustaining the motion to quash.*—If the motion to quash is sustained, the court may order that another complaint or information be filed except as provided in section 6 of this Rule. If the order is made, the accused, if in custody, shall not be

discharged unless admitted to bail. If no order is made or if having been made, no new information is filed within the time specified in the order or within such further time as the court may allow for good cause, the accused, if in custody, shall be discharged unless he is also in custody for another charge. (5a)

SEC. 6. *Order sustaining the motion to quash not a bar to another prosecution; exception.*—An order sustaining the motion to quash is not a bar to another prosecution for the same offense unless the motion was based on the grounds specified in section 3 (g) and (i) of this Rule. (6a)

SEC. 7. *Former conviction or acquittal; double jeopardy.*—When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

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

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

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

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

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

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

The provisional dismissal of offenses punishable by imprisonment not exceeding six (6) years or a fine of any amount, or both, shall become permanent one (1) year after issuance of the order without the case having been revived. With respect to offenses punishable by imprisonment of more than six (6) years, their provisional dismissal shall become permanent two (2) years after issuance of the order without the case having been revived, (n)

SEC. 9. *Failure to move to quash or to allege any ground therefor.*—The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or

information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule. (8a)

RULE 118

PRE-TRIAL

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

(a) plea bargaining;

(b) stipulation of facts;

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

(d) waiver of objections to admissibility of evidence;

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

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

SEC. 2. *Pre-trial agreement.*—All agreements or admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and counsel, otherwise, they cannot be used against the accused. The agreements covering the matters referred to in section 1 of this Rule shall be approved by the court, (sec. 4, cir. 38-98)

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

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

RULE 119

TRIAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 7. *Public attorney's duties where accused is imprisoned.*—If the public attorney assigned to defend a person charged with a crime knows that the latter is preventively detained, either because he is charged with a bailable crime but has no means to post bail,

or, is charged with a non-bailable crime, or, is serving a term of imprisonment in any penal institution, it shall be his duty to do the following:

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 9. *Remedy where accused is not brought to trial within the time limit.*—If the accused is not brought to trial within the time limit required by Section 1(g), Rule 116 and Section 1, as extended by Section 6 of this rule, the information may be dismissed on motion of the accused on the ground of denial of his right to speedy trial. The accused

shall have the burden of proving the motion but the prosecution shall have the burden of going forward with the evidence to establish the exclusion of time under section 3 of this Rule. The dismissal shall be subject to the rules on double jeopardy.

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

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

SEC. 11. *Order of trial.*—The trial shall proceed in the following order:

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

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

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

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

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

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

SEC. 13. *Examination of defense witness; how made.*—If the court is satisfied that the examination of a witness for the accused is necessary, an order shall be made directing that the witness be examined at a specific date, time and place and that a copy of the order be served on the prosecutor at least three (3) days before the scheduled examination. The examination shall be taken before a judge, or, if not practicable, a member of the Bar in good standing so designated by the judge in the order, or if the order be made by a court of superior jurisdiction, before an inferior court to be designated therein. The examination shall proceed notwithstanding the absence of the prosecutor

provided he was duly notified of the hearing. A written record of the testimony shall be taken. (5a)

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

SEC. 15. *Examination of witness for the prosecution.*—When it satisfactorily appears that a witness for the prosecution is too sick or infirm to appear at the trial as directed by the court, or has to leave the Philippines with no definite date of returning, he may forthwith be conditionally examined before the court where the case is pending. Such examination, in the presence of the accused, or in his absence after reasonable notice to attend the examination has been served on him, shall be conducted in the same manner as an examination of the trial. Failure or refusal of the accused to attend the examination after notice shall be considered a waiver. The statement taken may be admitted in behalf of or against the accused. (7a)

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

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

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

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

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

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

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

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

SEC. 18. *Discharge of accused operates as acquittal*.—The order indicated in the preceding section shall amount to an acquittal of the discharged accused and shall be a bar to future prosecution for the same offense, unless the accused fails or refuses to

testify against his co-accused in accordance with his sworn statement constituting the basis for his discharge. (10a)

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

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

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

SEC. 22. *Consolidation of trials of related offenses.*—Charges for offenses founded on the same facts or forming part of a series of offenses of similar character may be tried jointly at the discretion of the court. (14a)

SEC. 23. *Demurrer to evidence.*—After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court

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

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

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

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

SEC. 24. *Reopening.*—At any time before finality of the judgment of conviction, the judge may, *motu proprio* or upon motion, with hearing in either case, reopen the

proceedings to avoid a miscarriage of justice. The proceedings shall be terminated within thirty (30) days from the order granting it. (n)

RULE 120

JUDGMENT

SECTION 1. *Judgment; definition and form.*—Judgment is the adjudication by the court that the accused is guilty or not guilty of the offense charged and the imposition on him of the proper penalty and civil liability, if any. It must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts and the law upon which it is based. (1a)

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

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

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

SEC. 4. *Judgment in case of variance between allegation and proof.*—When there is variance between the offense charge in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved. (4a)

SEC. 5. *When an offense includes or is included in another.*—An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter. (5a)

SEC. 6. *Promulgation of judgment.*—The judgment is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense, the judgment may be pronounced in the presence of

his counsel or representative. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court.

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

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

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

If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these rules against the judgment and the court shall order his arrest. Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice. (6a)

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

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

SEC. 9. *Existing provisions governing suspension of sentence, probation and parole not affected by this Rule.*—Nothing in this Rule shall affect any existing provisions in the laws governing suspension of sentence, probation or parole. (9a)

RULE 121

NEW TRIAL OR RECONSIDERATION

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

SEC. 2. *Grounds for a new trial.*—The court shall grant a new trial on any of the following grounds:

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

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

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

SEC. 4. Form *of motion and notice* {0 *the prosecutor.*—The motion for new trial or reconsideration shall be in writing and shall state the grounds on which it is based. If based on a newly-discovered evidence, the motion must be supported by affidavits of witnesses by whom such evidence is expected to be given or by duly authenticated copies of documents which are proposed to be introduced in evidence. Notice of the motion for new trial or reconsideration shall be given to the prosecutor. (4a)

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

SEC. 6. *Effects of granting a new trial or reconsideration.*— The effects of granting a new trial or reconsideration are the following:

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

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

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

RULE 122

APPEAL

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

SEC. 2. *Where to appeal.*—The appeal may be taken as follows:

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

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

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

SEC. 3. *How appeal taken.*—

(a) The appeal to the Regional Trial Court, or to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction, shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and by serving a copy thereof upon the adverse party.

(b) The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review under Rule 42.

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

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

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

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

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

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

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

If death penalty is imposed, the stenographic reporter shall, within thirty (30) days from promulgation of the sentence, file with the clerk the original and four copies of the duly certified transcript of his notes of the proceedings. No extension of time for filing of said transcript of stenographic notes shall be granted except by the Supreme Court and only upon justifiable grounds. (7a)

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

SEC. 9. *Appeal to the Regional Trial Courts.*—

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

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

(c) Within fifteen (15) days from receipt of said notice, the parties may submit memoranda or briefs, or may be required by the Regional Trial Court to do so. After the submission of such memoranda or briefs, or upon the expiration of the period to file the same, the Regional Trial Court shall decide the case on the basis of the entire record of the case and of such memoranda or briefs as may have been filed. (9a)

SEC. 10. *Transmission of records in case of death penalty.*— In all cases where the death penalty is imposed by the trial court, the records shall be forwarded to the Supreme Court for automatic review and judgment within five (5) days after the fifteenth (15) day following the promulgation of the judgment or notice of denial of a motion for new trial or reconsideration. The transcript shall also be forwarded within ten (10) days after the filing thereof by the stenographic reporter. (10a)

SEC. 11. Effect of appeal by any of several accused.—

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

(b) The appeal of the offended party from the civil aspect shall not affect the criminal aspect of the judgment or order appealed from.

(c) Upon perfection of the appeal, the execution of the judgment or final order appealed from shall be stayed as to the appealing party, (11a)

SEC. 12. *Withdrawal of appeal.*—Notwithstanding perfection of the appeal, the Regional Trial 'Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, or Municipal Circuit Trial Court, as the case may be, may allow the appellant to withdraw his appeal before the record has been forwarded by the clerk of court to the proper appellate court as provided in section 8, in which case the judgment shall become final. The Regional Trial Court may also, in its discretion, allow the appellant from the judgment of a Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, or Municipal Circuit Trial Court to withdraw his appeal, provided a motion to that effect is filed before rendition of the judgment in the case on appeal, in which case the judgment of the court of origin shall become final and the case shall be remanded to the latter court for execution of the judgment. (12a)

SEC. 13. *Appointment of counsel de oficio for accused on appeal.*—It shall be the duty of the clerk of the trial court, upon filing of a notice of appeal, to ascertain from the appellant, if confined in prison, whether he desires the Regional Trial Court, Court of Appeals or the Supreme Court to appoint a counsel *de oficio* to defend him and to transmit with the record on a form to be prepared by the clerk of court of the appellate court, a certificate of compliance with this duty and of the response of the appellant to his inquiry. (13a)

RULE 123

PROCEDURE IN THE MUNICIPAL TRIAL COURTS

SECTION 1. *Uniform Procedure.*—The procedure to be observed in the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts shall be the same as in the Regional Trial Courts, except where a particular provision applies only to either of said courts and in criminal cases governed by the Revised Rule on Summary Procedure, (1a)

RULE 124

PROCEDURE IN THE COURT OF APPEALS

SECTION 1. *Title of the case.*—In all criminal cases appealed to the Court of Appeals, the party appealing the case shall be called the "appellant" and the adverse party the "appellee," but the title of the case shall remain as it was in the court of origin, (1a)

SEC. 2. *Appointment of counsel de oficio for the accused.*—If it appears from the record of the case as transmitted that (a) the accused is confined in prison, (b) is without counsel

de parte on appeal, or (c) has signed the notice of appeal himself, the clerk of court of the Court of Appeals shall designate a counsel *de oficio.*

An appellant who is not confined in prison may, upon request, be assigned a counsel *de oficio* within ten (10) days from receipt of the notice to file brief and he establishes his right thereto. (2a)

SEC. 3. *When brief for appellant to be filed.*—Within thirty (30) days from receipt by the appellant or his counsel of the notice from the clerk of court of the Court of Appeals that the evidence, oral and documentary, is already attached to the record, the appellant shall file seven (7) copies of his brief with the clerk of court which shall be accompanied by proof of service of two (2) copies thereof upon the appellee. (3a)

SEC. 4. *When brief for appellee to be filed; reply brief of the appellant.*—Within thirty (30) days from receipt of the brief of the appellant, the appellee shall file seven (7) copies of the brief of the appellee with the clerk of court which shall be accompanied by proof of service of two (2) copies thereof upon the appellant.

Within twenty (20) days from receipt of the Brief of the appellee, the appellant may file a reply brief traversing matters raised in the former but not covered in the brief of the appellant. (4a)

SEC. 5. *Extension of time for filing briefs.*—Extension of time for the filing of briefs will not be allowed except for good and sufficient cause and only if the motion for extension is filed before the expiration of the time sought to be extended. (5a)

SEC. 6. *Form of briefs.*—Briefs shall either be printed, encoded or typewritten in double space on legal size, good quality unglazed paper, 330 mm. in length by 216 mm. in width. (6a)

SEC. 7. *Contents of brief.*—The briefs in criminal cases shall have the same contents as provided in sections 13 and 14 of Rule 44. A certified true copy of the decision or final order appealed from shall be appended to the brief of the appellant. (7a)

SEC. 8. *Dismissal of appeal for abandonment or failure to prosecute.*—The Court of Appeals may, upon motion of the appellee or *motu proprio* and with notice to the appellant in either case, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, except where the appellant is represented by a counsel *de oficio.*

The Court of Appeals may also, upon motion of the appellee or *motu proprio,* dismiss the appeal if the appellant escapes from prison or confinement, jumps bail or flees to a foreign country during the pendency of the appeal. (8a)

SEC. 9. *Prompt disposition of appeals.*—Appeals of accused who are under detention shall be given precedence in their disposition over other appeals. The Court of Appeals shall hear and decide the appeal at the earliest practicable time with due regard to the rights of the parties. The accused need not be present in court during the hearing of the appeal. (9a)

SEC. 10. *Judgment not to be reversed or modified except for substantial error.*—No judgment shall be reversed or modified unless the Court of Appeals, after an examination of the record and of the evidence adduced by the parties, is of the opinion that error was committed which injuriously affected the substantial rights of the appellant. (10a)

SEC. 11. Scope *of judgment.*—The Court of Appeals may reverse, affirm, or modify the judgment and increase or reduce the penalty imposed by the trial court, remand the case to the Regional Trial Court for new trial or retrial, or dismiss the case. (11a)

SEC. 12. *Power to receive evidence.*—The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases (a) falling within its original jurisdiction, (b) involving claims for damages arising from provisional remedies, or (c) where the court grants a new trial based only on the ground of newly-discovered evidence. (12a)

SEC. 13. *Quorum of the court; certification or appeal of cases to Supreme Court.*—Three (3) Justices of the Court of Appeals shall constitute a quorum for the sessions of a division. The unanimous vote of the three (3) Justices of a division shall be necessary for the pronouncement of a judgment or final resolution, which shall be reached in consultation before the writing of the opinion by a member of the division. In the event that the three (3) Justices can not reach a unanimous vote, the Presiding Justice shall direct the raffle committee of the Court to designate two (2) additional Justices to sit temporarily with them, forming a special division of five (5) members and the concurrence of a majority of such division shall be necessary for the pronouncement of a judgment or final resolution. The designation of such additional Justices shall be made strictly by raffle and rotation among all other Justices of the Court of Appeals.

Whenever the Court of Appeals finds that the penalty of death, *reclusion perpetua,* or life imprisonment should be imposed in a case, the court, after discussion of the evidence and the law involved, shall render judgment imposing the penalty of death, *reclusion perpetua,* or life imprisonment as the circumstances warrant. However, it shall refrain from entering the judgment and forthwith certify the case and elevate the entire record thereof to the Supreme Court for review. (13a)

SEC. 14. *Motion for new trial.*—At any time after the appeal from the lower court has been perfected and before the judgment of the Court of Appeals convicting the appellant becomes final, the latter may move for a new trial on the ground of newly-discovered evidence material to his defense. The motion shall conform with the provisions of section 4, Rule 121. (14a)

SEC. 15. *Where new trial conducted.*—When a new trial is granted, the Court of Appeals may conduct the hearing and receive evidence as provided in section 12 of this Rule or refer the trial to the court of origin. (15a)

SEC. 16. *Reconsideration.*—A motion for reconsideration shall be filed within fifteen (15) days from notice of the decision or final order of the Court of Appeals, with copies thereof served upon the adverse party, setting forth the grounds in support thereof. The mittimus shall be stayed during the pendency of the motion for reconsideration. No party shall be allowed a second motion for reconsideration of a judgment or final order. (16a)

SEC. 17. *Judgment transmitted and filed in trial court.*—When the entry of judgment of the Court of Appeals is issued, a certified true copy of the judgment shall be attached to the original record which shall be remanded to the clerk of the court from which the appeal was taken. (17a)

SEC. 18. *Application of certain rules in civil procedure to criminal* cases.—The provisions of Rules 42, 44 to 46 and 48 to 56 relating to procedure in the Court of Appeals and in the Supreme Court in original and appealed civil cases shall be applied to criminal cases insofar as they are applicable and not inconsistent with the provisions of this Rule. (18a)

RULE 125

PROCEDURE IN THE SUPREME COURT

SECTION 1. *Uniform procedure.*—Unless otherwise provided by the Constitution or by law, the procedure in the Supreme Court in original and in appealed cases shall be the same as in the Court of Appeals, (1a)

SEC. 2. *Review* of *decisions of the Court of Appeals.*—The procedure for the review by the Supreme Court of decisions in criminal cases rendered by the Court of Appeals shall be the same as in civil cases. (2a)

SEC. 3. *Decision if opinion is equally divided.*—When the Supreme Court *en banc* is equally divided in opinion or the necessary majority cannot be had on whether to acquit the appellant, the case shall again be deliberated upon and if no decision is reached after re-deliberation, the judgment of conviction of the lower court shall be reversed and the accused acquitted. (3a)

RULE 126

SEARCH AND SEIZURE

SECTION 1. *Search warrant defined.*—A search warrant is an order in writing issued in the name of the People of the Philippines, signed by a judge and directed to a peace officer, commanding him to search for personal property described therein and bring it before the court. (1)

SEC. 2. *Court where application for search warrant shall be filed.*—An application for search warrant shall be filed with the following:

(a) Any court within whose territorial jurisdiction a crime was committed.

(b) For compelling reasons stated in the application, any court within the judicial region where the crime was committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced.

However, if the criminal action has already been filed, the application shall only be made in the court where the criminal action is pending, (n)

SEC. 3. *Personal property to be seized.*—A search warrant may be issued for the search and seizure of personal property:

(a) Subject of the offense;

(b) Stolen or embezzled and other proceeds, or fruits of the offense; or

(c) Used or intended to be used as the means of committing an offense. (2a)

SEC. 4. *Requisites for issuing search warrant.*—A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines. (3a)

SEC. 5. *Examination of complainant; record.*—The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted. (4a)

SEC. 6. *Issuance and form of search warrant.*—If the judge is satisfied of the existence of facts upon which the application is based or that there is probable cause to believe that they exist, he shall issue the warrant, which must be substantially in the form prescribed by these Rules. *(5a)

SEC. 7. *Right to break door or window to effect search.*—The officer, if refused admittance to the place of directed search after giving notice of his purpose and authority, may break open any outer or inner door or window of a house or any part of a house or anything therein to execute the warrant or liberate himself or any person lawfully aiding him when unlawfully detained therein. (6)

SEC. 8. *Search of house, room, or premises to be made in presence of two witnesses.*—No search of a house, room, or any other premises shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality. (7a)

SEC. 9. *Time of making search.*—The warrant must direct that it be served in the day time, unless the affidavit asserts that the property is on the person or in the place ordered to be searched, in which case a direction may be inserted that it be served at any time of the day or night. (8)

SEC. 10. *Validity of search warrant.*—A search warrant shall be valid for ten (10) days from its date. Thereafter, it shall be void. (9a)

SEC. 11. *Receipt for the property seized.*—The officer seizing property under the warrant must give a detailed receipt for the same to the lawful occupant of the premises in whose

presence the search and seizure were made, or in the absence of such occupant, must, in the presence of at least two witnesses of sufficient age and discretion residing in the same locality, leave a receipt in the place in which he found the seized property. (10a)

SEC. 12. *Delivery of property and inventory thereof to court; return and proceedings thereon.*—(a) The officer must forthwith deliver the property seized to the judge who issued the warrant, together with a true inventory thereof duly verified under oath.

(b) Ten (10) days after issuance .of the search warrant, the issuing judge shall ascertain if the return has been made, and if none, shall summon the person to whom the warrant was issued and require him to explain why no return was made. If the return has been made, the judge shall ascertain whether section 11 of this Rule has been complied with and shall require that the property seized be delivered to him. The judge shall see to it that subsection (a) hereof has been complied with.

(c) The return on the search warrant shall be filed and kept by the custodian of the log book on search warrants who shall enter therein the date of the return, the result, and other actions of the judge.

A violation of this section shall constitute contempt of court. (11a)

SEC. 13. *Search incident to lawful arrest.*—A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant. (12a)

SEC. 14. *Motion to quash a search warrant or to suppress evidence; where to file.*—A motion to quash a search warrant and/or to suppress evidence obtained thereof may be filed in and acted upon only by the court where the action has been instituted. If no criminal action has been instituted, the motion may be filed in and resolved by the court that issued the search warrant. However, if such court failed to resolve the motion and a criminal case is subsequently filed in another court, the motion shall be resolved by the latter court. (n)

RULE 127

PROVISIONAL REMEDIES IN CRIMINAL CASES

SECTION 1. *Availability of provisional remedies.*—The provisional remedies in civil actions, insofar as they are applicable, may be availed of in connection with the civil action deemed instituted with the criminal action. (1a)

SEC. 2. *Attachment.*—When the civil action is properly instituted in the criminal action as provided in Rule 111, the offended party may have the property of the accused attached as security for the satisfaction of any judgment that may be recovered from the accused in the following cases:

(a) When the accused is about to abscond from the Philippines;

(b) When the criminal action is based on a claim for money or property embezzled or fraudulently misapplied or converted to the use of the accused who is a public officer, officer of a corporation, attorney, factor, broker, agent or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;

(c) When the accused has concealed, removed, or disposed of his property, or is about to do so; and

(d) When the accused resides outside the Philippines. (2a)