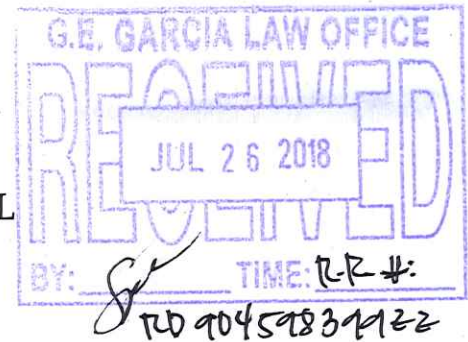


REPUBLIC OF THE PHILIPPINES
PRESIDENTIAL ELECTORAL TRIBUNAL
Manila



FERDINAND "BONGBONG" R.
MARCOS,

Protestant,

-versus -

PET Case No. 005
For: Election Protest
Vice-President

MARIA LEONOR "LENI DAANG
MATUWID" G. ROBREDO,

Protestee.

x -----x

COMMENT

(ON THE URGENT MOTION FOR RECONSIDERATION (OF THE RESOLUTION DATED APRIL 10, 2018) WITH REITERATIVE PRAYER TO IMMEDIATELY DIRECT THE HEAD REVISORS TO USE THE TWENTY-FIVE (25%) THRESHOLD PERCENTAGE IN THE REVISION, RECOUNT AND RE-APPRECIATION OF BALLOTS DATED APRIL 18, 2018 FILED BY COUNSEL FOR PROTESTEE ROBREDO)

COMES NOW, the Commission on Elections (COMELEC), through the undersigned counsels of the Law Department, and unto this Honorable Tribunal, most respectfully states:

1. In the Resolution dated 24 April 2018, this Honorable Tribunal required, among others, the COMELEC to COMMENT, within ten (10) days from notice, on the *Urgent Motion for Reconsideration (of the Resolution Dated April 10, 2018) with Reiterative Prayer to Immediately Direct the Head Revisors to Use the Twenty-Five (25%) Threshold Percentage in the Revision, Recount and Re-Appreciation of Ballots* dated April 18, 2018 filed by counsel for Protestee Robredo.

2. The COMELEC was represented by the Office of the Solicitor General (OSG). It filed *Motions for Extension of Time to File Comment* for the COMELEC.

3. The OSG, on 04 July 2018, instead of filing COMELEC's *Comment*, filed a *Manifestation and Motion* in its capacity as the People's Tribune, praying, among others, that the COMELEC be allowed to submit its own *Comment* to the Protestee's "Urgent Motion for Reconsideration".

4. On 10 July 2018, this Honorable Tribunal issued a Resolution, which states, among others:

"(c) **DIRECT** the Commission on Elections (COMELEC) to **FILE** its **OWN COMMENT** on the Urgent Motion for Reconsideration (of the resolution dated April 10, 2018) with Reiterative Prayer to Immediately Direct the Head Revisors to Use the Twenty-Five (25%) Threshold Percentage in the Revision, Recount and Re-Appreciation of Ballots dated April 18, 2018 filed by counsel for protestee Robredo, within a **NON-EXTENDIBLE** period of ten (10) days from notice hereof;"

5. The said resolution was received by COMELEC, through the Office of the Clerk of the Commission on 12 July 2018.

6. Hence, COMELEC has until 22 July 2018 within which to file its *Comment*.

7. Accordingly, the COMELEC most respectfully submits this *Comment*.

8. The COMELEC, in the exercise of its constitutional mandate to administer elections and decide all questions relating to elections, has decided to calibrate the automated voter counting system for the 9 May 2016 National and Local Elections to read as valid votes, marks that cover at least about 25% (when seen by human eyes) of the oval for each candidate. The chosen technology - optical scanning technology - appreciates votes or non-votes according to how it is configured to that at least about 25% (when seen by human eyes) of the oval for each candidate. All election results are based on this threshold.

8.1. COMELEC wanted to make sure that all determinable expressions of intent to vote are counted, while at the same time, that mere "accidental" or "hesitation" marks, which are not reflective of voter's intent, are not considered votes. This was the very reason why COMELEC decided on the 25% threshold.

8.2. COMELEC encouraged the voters to fully shade the ovals on the ballots through its public information campaign, which aims to ensure that votes are surely counted because inadequate or erroneous shading may result to the votes not being counted by the machine.

8.3. In the 2010 National and Local Elections, the shading threshold was set at 50%. However, shadings that are between about 25% to 49% are considered ambiguous marks. When marks are "ambiguous", the ballots are returned to the voters to give them opportunity to correct their votes and to shade the ovals more adequately, if not fully. This procedure was, however, discarded because of the anticipated longer queuing time at the polling place. The "ambiguous mark" range was thus removed and the threshold set at about 25%.

9. As part of its mandate in the administration of elections, in the 09 May 2016 National and Local Elections, the COMELEC generally instructed the voters to fully shade the ovals of the ballots, however, it has set the shading threshold of the oval at about 25% to guarantee that the votes are not wasted due to inadequate shading or that no accidental or unintended small marks are counted as votes.

10. The legally mandated Random Manual Audit process used a diagrammatic guide which is consistent with a 25% shading marks when seen by human eyes. This is what is precisely referred to by COMELEC Minute Resolution No. 16-0600.

11. Atty. Felipa B. Anama, then the Clerk of the Tribunal, initially sent a letter dated 12 August 2016 to the COMELEC, requesting for the COMELEC Guidelines on revision or appreciation of votes. The letter was referred to the Office of Commissioner Luie Tito G. Guia, as the then Supervising Commissioner of the RMA process, **where visual examination of the paper ballots was done, the procedure for which is like revision of ballots in an election protest.** Relatedly, Atty. Anama also sent a letter¹ dated 23 August 2016 to Commissioner Guia, requesting for a copy of the Smartmatic Guidelines which was used by COMELEC in the segregation of ballots throughout the manual counting to determine which type of shading was counted or not counted by the voting counting machines (VCM) and as used during the Random Manual Audit.

¹ Certified True Copy of which is hereto attached as Annex "A" and made an integral part hereof.

12. The Random Manual Audit Committee submitted to the COMELEC *En Banc* its Memorandum addressing the request of this Honorable Tribunal, with the RMA Guide on Appreciation of Markings. Attached to the Memorandum is a copy of the **Random Manual Audit Guide on Appreciation of Markings**, which is a diagram or illustration (not in textual form) of the permutations of possible marks that the VCMs would either read as votes, or non-votes. The letter² of Commissioner Guia which explained to the PET the RMA Guide *vis-a-vis* the threshold set, pertinently states:

*“xxx Although the voters are told through the voter information efforts of the Commission to shade the ballots **fully**, the shading threshold was **set at about 25%** of the oval space. This is to help ensure that votes are not wasted due to inadequate shading or that no accidental or unintended small marks are counted as votes. In other words, when a mark covers at least 25% of the oval, said mark is supposed to be considered a vote by the system. On the other hand, when the mark or shading covers less than 25% of the oval or when there is no mark at all, no vote is supposed to be counted. In the random manual audit therefore, only the appropriately registered marks or shadings (those that were supposed to be read as votes by the system) are considered to have correctly expressed voters’ intent.*

xxx”

13. In connection thereto, the COMELEC *En Banc*, in **Minute Resolution No. 16-0600³** entitled “IN THE MATTER OF THE REQUEST OF THE PRESIDENTIAL ELECTORAL TRIBUNAL FOR A COPY OF THE COMELEC GUIDELINES USED IN THE MANUAL COUNTING OF BALLOTS SPECIFICALLY ON THE TYPE OF ‘SHADING’ READ BY THE VOTE COUNTING MACHINE (VCM), FOR THE TRIBUNAL’S REFERENCE IN RELATION TO PET CASE NO. 005 (MARCOS VS. ROBREDO)” dated September 6, 2016, adopted and confirmed the Memorandum of Commissioner Guia and resolved as follows:

*“The Commission **RESOLVED**, as it hereby **RESOLVES**, to **adopt and confirm** the attached Memorandum of Commissioner Luie Tito F. Guia, Oversight Commissioner for the Random Manual Audit 2016, addressed to Atty. Felipa B. Anama, Clerk of the Tribunal, Presidential Electoral Tribunal, together with the Random Manual Audit guidelines on the appreciation of markings for the May 9, 2016*

² Certified True Copy of which is hereto attached as Annex “B” and made an integral part hereof.

³ Certified True Copy of which is hereto attached as Annex “C” and made an integral part hereof.

National and Local Elections, as the position of the Commission specifically on the type of marks or shadings that would be read either as votes or non-votes by the optical scan counting system for the May 9, 2016 NLE."

14. After the said confirmation, Commissioner Guia submitted the **Random Manual Audit Guide on Appreciation of Markings** to the PET.

15. This confirmation on the part of the COMELEC shows that it had already adopted the application of a 25% threshold in the shading of ballots.

16. In fact, the RMA Guide is what guides the COMELEC's recount and revision process, in all protest cases relative to the 09 May 2016 National and Local Elections filed with and pending before the COMELEC, all of which are to be resolved in the exercise of its original or appellate jurisdiction.

17. To reiterate, for purposes of the 09 May 2016 National and Local Elections, COMELEC, in order to ensure that votes are not wasted due to inadequate shading or that no accidental or unintended small marks are counted as votes in order to reflect the true intent of the voter, had set the ballot shading threshold at 25%.

18. Nonetheless, we recognize the mandate of the 1987 Philippine Constitution⁴ that the Supreme Court, sitting *En Banc*, in its capacity as the Presidential Electoral Tribunal (PET), is the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice President.

19. Among the powers of the PET as the sole judge of all contests relating to the election, returns, and qualifications of the President and Vice President is to promulgate rules and regulations relative to the matters within its jurisdiction.

20. While COMELEC recognizes the power and authority of the PET to promulgate its own rules under the Constitution, COMELEC is also endowed with a similar constitutional power and authority to administer the country's election and to decide all questions affecting elections⁵.

⁴ Section 4, Article VII, 1987 Constitution.

⁵ Section 2 (3), Article IX-C, 1987 Constitution.

21. Moreover, Republic Act No. 9369⁶ granted the COMELEC the power to choose an appropriate technology in elections, which would necessarily include the issue on deciding how votes can be read and appreciated by the said technology.

22. In deciding election disputes, like election protest, decisions should be based on the standards and procedures used during the conduct of elections and in ascertainment of election results. To use different standard would be erroneous and may result to unnecessary questions on the legitimacy of all elected officials, from the President down to the last Sangguniang Bayan member. It cannot be overemphasized that **the threshold issue as it is now being presented is more an issue of fact than a question of law. Otherwise stated, it is more an issue of what was used to appreciate, count votes, and proclaim winners, than an issue of which rule, as between those of COMELEC and the Supreme Court, should prevail.**

23. In the past, the COMELEC *En Banc*, in order to ensure that the sovereign will of the people will be upheld, had promulgated the following Resolutions pertaining to the threshold shading of the ballots, to wit:

- i. **Resolution No. 8804⁷** entitled "**IN RE: COMELEC RULES OF PROCEDURE ON DISPUTES IN AN AUTOMATED ELECTION SYSTEM IN CONNECTION WITH THE MAY 10, 2010 ELECTIONS**", promulgated on 22 March 2010.

Section 6 (l), Rule 15 thereof provides:

"In looking at the shades or marks used to register votes, the recount committee shall bear in mind that the will of the voters reflected as votes in the ballots shall as much as possible be given effect, setting aside any technicalities. Furthermore, the votes thereon are presumed to have been made by the voter and shall be considered as such unless reasons exist that will justify their rejection. However, marks or shades which are less than 50% of the oval shall not be considered as valid votes. Any issue as to whether a certain mark or shade is within the

⁶ AN ACT AMENDING REPUBLIC ACT NO. 8436, ENTITLED "AN ACT AUTHORIZING THE COMMISSION ON ELECTIONS TO USE AN AUTOMATED ELECTION SYSTEM IN THE MAY 11, 1998 NATIONAL OR LOCAL ELECTIONS AND IN SUBSEQUENT NATIONAL AND LOCAL ELECTORAL EXERCISES, TO ENCOURAGE TRANSPARENCY, CREDIBILITY, FAIRNESS AND ACCURACY OF ELECTIONS, AMENDING FOR THE PURPOSE BATAS PAMPANSA BLG. 881, AS AMENDED, REPUBLIC ACT NO. 7166 AND OTHER RELATED ELECTIONS LAWS, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES".

⁷ Certified True Copy of which is hereto attached as Annex "D" and made an integral part hereof.

threshold shall be determined by feeding the ballot on the PCOS machine, and not by human determination."

- ii. **Resolution No. 9104⁸** entitled "IN THE MATTER OF ADOPTING RULES OF PROCEDURE FOR THE RECOUNT OF BALLOTS SUBJECT OF ELECTION PROTEST CASES FILED WITH THE COMMISSION ON ELECTIONS IN CONNECTION WITH THE MAY 10, 2010 NATIONAL AND LOCAL ELECTIONS, AMENDING PORTIONS OF SECTION 6, RULE 15 OF COMELEC RESOLUTION NO. 8804 PROMULGATED ON MARCH 22, 2010", promulgated on 30 November 2010.

Amended, among others, Section 6 (I), Rule 15 of Comelec Resolution No. 8804, wherein the provision on the 50% mark or shade was deleted.

Also, for validation and recount, Section 11 (B) thereof pertinently states:

"B. Validation and Recount:

1. (a) the recorder of the Recount Committee shall physically count the ballots found inside the ballot box and compare the physical count to the total number of ballots recorded on the election returns. Ballots that were rejected on the election returns. Ballots that were rejected by the PCOS machine in the May 10, 2010 elections shall be set aside and shall not be reconsidered in the recount proceedings;

(b) if the total number of physical ballots does not match the total number recorded in the election returns, the recorder of the Recount Committee shall compare the total number of physical ballots against the total number of picture image files of ballots found in the ballot image CF card;

(c) if there is still a discrepancy between the total number of picture image files of ballots in the ballot image CF card and the physical count of ballots, the total number of picture image files of ballots in the ballot image CF card shall prevail; and

(d) if there are physical ballots that have no corresponding picture images, such physical ballots shall not be included in

⁸ Certified True Copy of which is hereto attached as Annex "E" and made an integral part hereof.

the recount proceedings. On the other hand, if there are picture images with no corresponding physical ballots, the picture image files shall still be included in the recount proceedings."

- iii. **Resolution No. 9164⁹** entitled "IN THE MATTER OF REINSTATING AND REIMPLEMENTING COMELEC RESOLUTION NO. 8804 WITH AMENDMENTS", promulgated on 16 March 2011.

Section 6, Rule 15 of Comelec Resolution No. 8804, among others, was reinstated and amended. It defined "Voting Marks" as markings placed beside the ovals that may appear to show the intent of the voter to vote for a party, which may be subject to claims. Still, there is no provision pertaining to the 50% mark or shade.

- iv. **Resolution No. 9720¹⁰** entitled "IN THE MATTER OF AMENDING RULES 2, 6, 8, 13 AND 15 OF COMELEC RESOLUTION NO. 8804 AS AMENDED BY COMELEC RESOLUTION NO. 9164", promulgated on 30 June 2013.

There is no provision pertaining to the 50% mark or shade.

- v. **Resolution No. 10113¹¹** entitled "GENERAL INSTRUCTIONS ON THE CONDUCT OF COUNTING AND CANVASSING OF BALLOTS OF DETAINEE VOTERS WITH VOTES CAST IN FAVOR OF LOCAL CANDIDATES IN CONNECTION WITH THE MAY 9, 2016 NATIONAL AND LOCAL ELECTIONS", promulgated on 3 May 2016.

Section 7 (f) (i) thereof states:

"When the oval beside the name of the candidate is not fully shaded, the SBEI-C shall consider the following points in appreciating the ballots:

⁹ Certified True Copy of which is hereto attached as Annex "F" and made an integral part hereof.

¹⁰ Certified True Copy of which is hereto attached as Annex "G" and made an integral part hereof.

¹¹ Certified True Copy of which is hereto attached as Annex "H" and made an integral part hereof.

i. Hesitation marks shall not be counted as a valid vote. This refers to a mark in the ballot where the shade of the oval fails to meet at least 20% of the area of the oval, which includes a point or other marks, and is unique for a particular oval. In determining hesitation marks, the SBEI-C shall consider the manner of shading of the voter in other positions. In case of doubt, the SBEI-C shall put the matter on a vote."

- vi. **Resolution No. 10141¹²** entitled "SUPPLEMENTAL RULES AND REGULATIONS IN THE CONDUCT OF COUNTING AND CANVASSING OF BALLOTS OF DETAINEE VOTERS WITH VOTES CAST FOR NATIONAL POSITIONS ONLY IN CONNECTION WITH THE MAY 9, 2016 NATIONAL AND LOCAL ELECTIONS", promulgated on 18 May 2016.

It adopted the Rules of counting and canvassing of detainee voters' ballots enunciated in Comelec Resolution No. 10113. The Special Board of Election Inspectors for Counting (SBEI-C) and Detainee Board of Canvassers (DBOC) were given authority to count and canvass the detainee voters' ballots with votes cast for national positions only.

24. Worthy to note that the 50% threshold was deleted, and was no longer mentioned in the subsequent resolutions. **The omission of the 50% threshold shows intent to abandon the same.**

25. In the case of *Mecano vs. Commission on Audit*¹³, the Supreme Court ruled that:

"We come now to the second category of repeal – the enactment of a statute revising or codifying the former laws on the whole subject matter. This is only possible if the revised statute or code was intended to cover the whole subject to be a complete and perfect system in itself. It is the rule that a subsequent statute is deemed to repeal a prior law if the former revises the whole subject matter of the former statute. When both intent and scope clearly evidence the idea of a repeal, then all parts and provisions of the prior act that are omitted from the revised act are deemed repealed."

¹² Certified True Copy of which is hereto attached as Annex "I" and made an integral part hereof.

¹³ G.R. No. 103982, 11 December 1992.

26. Likewise, in *Relampagos vs. Commission on Elections*¹⁴, and *Manlangit vs. Sandiganbayan and People of the Philippines*¹⁵, the Honorable Supreme Court pointed out a well-settled rule in statutory construction – that in the revision or codification of laws, all parts and provisions of the old laws that are omitted in the revised statute or code are **deemed repealed**, unless the statute or code provides otherwise expressly or impliedly.

27. The adoption of the hesitation mark rule (20% threshold) supports the following: (1) the intent of COMELEC **to reduce the threshold requirement**, and (2) the intent of COMELEC **to uphold the Intent Rule as the governing rule in the appreciation of ballots**.

28. With the deletion of the 50% threshold, the polestar in ballot appreciation ensures that no votes will be wasted due to inadequate shading by counting those votes that reflect the will of the electorate.

29. It was not **COMELEC Minute Resolution No. 16-0600** that set the 25% threshold. The resolution merely states in effect that the **Random Manual Audit Guide for Appreciation of Markings** is based on how the automated elections system is designed to read and “appreciate” votes on the ballots. It confirmed the setting of the so called “voting threshold” of 25%. When PET sought information from COMELEC as to how it can be guided in the “revision” of ballots in the pending election protest before it, COMELEC forwarded the RMA Guide because the visual examination of the paper ballots and the vote markings thereon, in the course of the audit, is like that performed during revision of ballots in election protests.

30. All told, **COMELEC Minute Resolution No. 16-0600** affirms the standing policy of the Commission to set the shading threshold at 25%.

PRAYER

WHEREFORE, premises considered, the Commission on Elections prays that this **SUBMISSION BE NOTED** and **DEEMED SATISFACTORY COMPLIANCE** with the Order of the Honorable Presidential Electoral Tribunal.

¹⁴ G.R. No. 118861, 27 April 1995.

¹⁵ G.R. No. 158014, 28 August 2007.

Other reliefs just and equitable under the premises are likewise most respectfully prayed for.


Intramuros, Manila, Philippines, 18 July 2018.

COMMISSION ON ELECTIONS:

Palacio del Gobernador, Intramuros, Manila


Tel. Nos. (02) 527-2768; (02) 527-0843

By:


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PUBLIC INFORMATION OFFICE

Supreme Court, Manila

NOTICE

CLERK OF TRIBUNAL

Presidential Electoral Tribunal

Padre Faura, Manila

Greetings:

Please submit the foregoing *Comment* for the consideration of the Honorable Tribunal.

Manila, 18 July 2018.


MARIA NORINA S. TANGARO-CASINGAL
Director IV

EXPLANATION OF SERVICE

A copy of this *Comment* was furnished the parties by registered mail due to time constraints and lack of messengerial personnel.


MARIA NORINA S. TANGARO-CASINGAL
Director IV

SUBMISSION OF DIGITAL COPIES

Pursuant to the Efficient Use of Paper Rule, soft copy of this *Comment*, saved in a compact disc is being filed simultaneously with its Tribunal-bound paper.


MARIA NORINA S. TANGARO-CASINGAL
Director IV

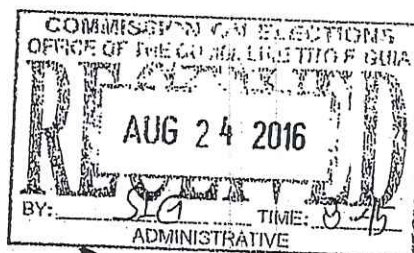


H
ANNEX

Republic of the Philippines
Presidential Electoral Tribunal
Manila

August 23, 2016

ATTY. LUIE TITO F. GUIA
Commissioner
Commission on Elections
Intramuros, Manila



Dear Atty. Guia:

In connection with PET Case No. 005 [Ferdinand "Bongbong" R. Marcos Jr. vs. Maria Leonor "Leni Daang Matuwid" G. Robredo], may we request for a copy of Smartmatic Guidelines which was used by the COMELEC in the segregation of ballots throughout the manual counting to determine which type of shading was counted or not counted by the voting counting machines (VCM) and as used during the Random Manual Audit, for our reference.

Thank you so much for your usual cooperation.

Very truly yours,

ATTY. FELIPA B. ANAMA
Clerk of the Tribunal

EDEN CHAI

524-95-60

525-40-58

It is hereby certified that this is a correct copy of the original document on file in the Office of Commissioner Luie Tito F. Guia, which consists of one (1) page. Issued this 4th of June 2018 at the Office of Commissioner Luie Tito F. Guia pursuant to the request of Atty. Akia A. Co of the Law Department, Commission on Elections, for whatever legal purpose it may serve.

ATTY. IRAH KARINA T. REYES
Attorney VI

Member of the Random Manual Audit Committee Working Group per Comelec Minute Resolution No. 16-0080.

COMMISSION ON ELECTIONS
CERTIFIED MACHINE COPY
OF THE ORIGINAL RECORD ON FILE

ATTY. MARIA NORINA S. TANGARD-CASINGAL
DIRECTOR IV. LAW DEPARTMENT

6 September 2016

ATTY. FELIPA B. ANAMA
Clerk of the Tribunal
Presidential Electoral Tribunal
Manila

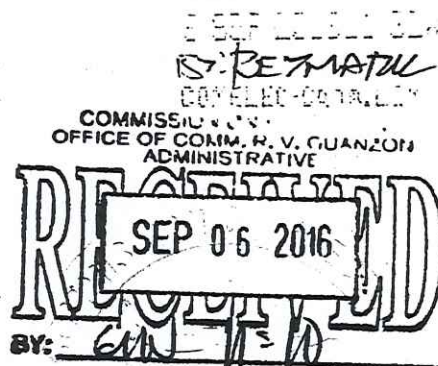
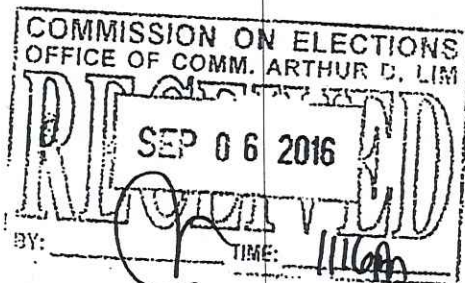
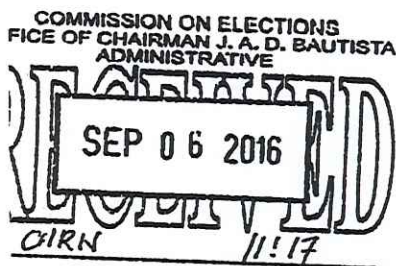
Dear Atty. Anama:

We address your request for "a copy of the *Smartmatic Guidelines*" for vote appreciation which was used in the Random Manual Audit. Said "Guideline" is actually an illustration of the different types of marks or shadings that would be read either as votes or non-votes by the optical scan counting system adopted for the 2016 elections.¹

The system adopted is designed to scan every oval on the ballot and count as vote those that contain appropriate marks based on pre-determined shading threshold. Although the voters are told through the voter information efforts of the Commission to shade the ballots fully, the shading threshold was set at about 25% of the oval space. This is to help ensure that votes are not wasted due to inadequate shading or that no accidental or unintended small marks are counted as votes. In other words, when a mark covers at least 25% of the oval, said mark is supposed to be considered a vote by the system. On the other hand, when the mark or shading covers less than 25% of the oval or when there is no mark at all, no vote is supposed to be counted. In the random manual audit therefore, only the appropriately registered marks or shadings (those that were supposed to be read as votes by the system) are considered to have correctly expressed voters' intent.

Considering however that visual (manual) appreciation of votes can only approximate the precision by which the machine is supposed to read the ballot marks or shading, the technology provider provided the Random Manual Audit committee of the Commission with the aforesaid visual illustration referred to above, which we are now forwarding to the Tribunal for its use in the pending

¹ Which was the same technology used in the 2010 and 2013 National and Local Election



It is hereby certified that this is a correct copy of the original document on file in the Office of Commissioner Luie Tito F. Guia, which consists of three (3) pages. Issued this 4th of June 2018 at the Office of Commissioner Luie Tito F. Guia pursuant to the request of Atty. Akia A. Co of the Law Department, Commission on Elections for legal purpose it may serve.

ATTY. IZAH KATRINA T. REYES
Attorney VI

any assistance that you may need from the Commission.

Very truly yours,

LUIE TITO F. GUIA

Commissioner

Oversight Commissioner for the Random Manual Audit 2016

CC.

The Chair and All Commissioners.

It is hereby certified that this is a correct copy of the original document on file in the Office of Commissioner Luie Tito F. Guia, which consists of three (3) pages. Issued this 4th of June 2018 at the Office of Commissioner Luie Tito F. Guia pursuant to the request of Atty. Akia A. Co of the Law Department, Commission on Elections for legal purpose it may serve.

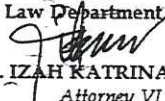
ATTY. IZAH K. TRINA T. REYES
Atorney VI

¹ Member of the Random Manual Audit Committee Working Group per Comelec Minute Resolution No. 16-0080.

Shaded oval					
Checkmark					
"X" mark					
Vertical line					
Horizontal line					
Circle around the voting target					
Half-moons					

Mark Type					
Shaded oval					
Checkmark					
"X" mark					
Vertical line					
Horizontal line					
Circle around the voting target					
Half-moons					

It is hereby certified that this is a correct copy of the original document on file in the Office of Commissioner Luie Tito F. Guia, which consists of three (3) pages. Issued this 4th of June 2018 at the Office of Commissioner Luie Tito F. Guia pursuant to the request of Atty. Akia A. Co of the Law Department Commission on Elections for legal purpose it may serve.


 ATTY. IZAH KATRINA T. REYES
 Attorney VI

¹ Member of the Random Manual Audit Committee Working Group per Comelec Minute Resolution No. 16-0080.

**EXCERPT FROM THE MINUTES OF THE REGULAR EN BANC
MEETING OF THE COMMISSION ON ELECTIONS
HELD ON SEPTEMBER 6, 2016**



Present:

Chairman J. Andres D. Bautista
Commissioner Christian Robert S. Lim
Commissioner Al A. Parreño
Commissioner Luie Tito F. Guia
Commissioner Arthur D. Lim
Commissioner Ma. Rowena Amelia V. Guanzon
Commissioner Sheriff M. Abas

xxx

xxx

xxx

16-0600

**IN THE MATTER OF THE REQUEST OF THE
PRESIDENTIAL ELECTORAL TRIBUNAL FOR A COPY OF THE
COMELEC GUIDELINES USED IN THE MANUAL COUNTING OF
BALLOTS SPECIFICALLY ON THE TYPE OF "SHADINGS" READ BY
THE VOTE COUNTING MACHINE (VCM), FOR THE TRIBUNAL'S
REFERENCE IN RELATION TO PET CASE NO. 005 (MARCOS VS.
ROBREDO)**

This pertains to the Memorandum dated August 12, 2016 of Executive Director Jose M. Tolentino, Jr. relative to the request of the Presidential Electoral Tribunal for a copy of the COMELEC Guidelines used in the Manual Counting of ballots specifically on the type of "shadings" read by the Vote Counting Machine (VCM), for the Tribunal's reference in relation to PET Case No. 005 (Marcos Jr. vs. Robredo).

The Memorandum of Executive Director Tolentino reads:

"This refers to the 12 August 2016 Letter of Atty. Felipa B. Anama, Clerk of the Presidential Electoral Tribunal (PET), requesting for a copy of the COMELEC Guidelines used in the manual counting of ballots specifically on the type of 'shadings' read by the vote counting machine (VCM), for the Tribunal's reference in relation to PET Case No. 005 (Marcos, Jr. versus Robredo).

The Project Management Office for the 2016 Automated Election System has not provided guidelines on manual counting since its focus was on the automated counting of ballots by the VCM. Neither has the [Electoral Contests] Adjudication Department finalized its guidelines as of the moment.

The most recent manual counting of the 'shadings' in the official ballots for the May 2016 elections was officially conducted by the Random Manual Audit Teams (RMAT) of the Random Manual Audit Committee (RMAC). The undersigned notes, however, that the RMAC guidelines were intended exclusively for use by the RMAT in the random manual audit activities.

In view of the foregoing, and considering that election protests for positions have already been filed, the undersigned respectfully recommends that the RMAC be authorized to release the

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used by the RMA in the random manual audit of the official ballots for the May 2016 elections, not only to the PET, but also to the other tribunals and courts that may subsequently request the same.


Respectfully submitted."

Relatedly, the Random Manual Audit Committee submitted to the en banc its Memorandum dated September 6, 2016 addressing the subject request of the PET Tribunal, with the RMA Guide on Appreciation of Markings.

The Commission **RESOLVED**, as it hereby **RESOLVES**, to **adopt and confirm** the attached Memorandum of Commissioner Luie Tito F. Guia, Oversight Commissioner for the Random Manual Audit 2016, addressed to Atty. Felipa B. Anama, Clerk of the Tribunal, Presidential Electoral Tribunal, together with the Random Manual Audit guidelines on the appreciation of markings for the May 9, 2016 National and Local Elections, as the position of the Commission specifically on the type of marks or shadings that would be read either as votes or non-votes by the optical scan counting system for the May 9, 2016 NLE.

Let the Office of Commissioner Luie Tito F. Guia and the Office of the Executive Director implement this Resolution.

SO ORDERED.


J. ANDRES D. BAUTISTA
Chairman


CHRISTIAN ROBERT S. LIM
Commissioner


LUIE TITO F. GUIA
Commissioner


MA. ROWENA AMELIA V. GUANZON
Commissioner


AL A. PARREÑO
Commissioner


ARTHUR D. LIM
Commissioner


SHERIFF M. ABAS
Commissioner

Cc: Chairman
All Commissioners
Executive Director
Deputy Executive Director for Operations
Deputy Executive Director for Administration
Random Manual Audit Committee

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Republic of the Philippines
COMMISSION ON ELECTIONS
Intramuros, Manila

**IN RE: COMELEC RULES OF
PROCEDURE ON DISPUTES
IN AN AUTOMATED ELECTION
SYSTEM IN CONNECTION WITH
THE MAY 10, 2010 ELECTIONS**

MELO, Jose A.R.
SARMIENTO, Rene V.
FERRER, Nicodemo T.
TAGLE, Lucenito N.
VELASCO, Armando C.
YUSOPH, Elias R.
LARRAZABAL, Gregorio Y.

Chairman
Commissioner
Commissioner
Commissioner
Commissioner
Commissioner
Commissioner

X-----X

Promulgated: **March 22, 2010**

RESOLUTION NO. 8804

**PART I
INTRODUCTORY PROVISIONS**

Rule I

Preliminary Provisions

Section 1. Title of the Rules - These rules shall be known and called as the Comelec Rules of Procedure on Disputes in an Automated Election System.

Section 2. Applicability. - These Rules shall apply to election disputes under the Automated Election System (AES) using the Precinct Count Optical Scan (PCOS) and shall cover pre-proclamation controversies and election protests.

Section 3. Objective. - The objective of these Rules is to afford accessible and effective remedy to address complaints on the conduct of elections relative to the use of PCOS AES in order to make the election process credible and the results thereof acceptable to the people.

Section 3. Application of the Rules of Court and other related rules. - The Commission on Elections (COMELEC) Rules of Procedure, the Rules of Court, and the Rules on Electronic Evidence shall apply by analogy, or in a suppletory character, and whenever necessary, practicable, and convenient.

Section 4. Suspension of the Rules. - In the interest of justice and in order to obtain speedy disposition of all matters pending before it, the Commission on Elections or any portion thereof, may be suspended by the COMELEC.

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Rule 2

Definition of Terms

Section 1. Meaning of Words - Whenever used in these Rules, the following words or terms shall mean:

- a) **Commission** shall refer either to the Commission *en banc* or to any of its two Divisions, unless otherwise indicated.
- b) **Automated Election System or AES** refers to an election system using appropriate technology, in voting, counting, consolidating, canvassing, transmission of election results, and other electoral processes.
- c) **Precinct Count Optical Scan, or PCOS**, means a technology wherein an optical ballot scanner, into which optical scan paper ballots marked by hand by the voter are inserted to be counted, is located in every precinct;
- d) **Official ballot** refers to the paper ballot with the pre-printed names of all candidates and with ovals corresponding to each of the names printed. The ovals are the spaces where voters express their choice through marking or shading using a marking pen.
- e) **Picture Image of the Ballot** refers to the image of the ballot captured by the PCOS machine at the time the voter feeds his/her ballots, which image is later stored in a memory or removable data storage device attached to the PCOS machines.
- f) **Election Returns** refers to the document showing the date of the election, the province, city, municipality and the precinct in which it is held, and the votes in figures for each candidate in a precinct or clustered precincts.
- g) **Electronic Election Returns** refers to the copy of the election return in electronic form generated by the PCOS machine that is electronically transmitted to the Municipal or City Board of Canvassers for the official canvass, to the COMELEC Back-Up Server, and to the Server for the dominant majority and dominant minority parties, the citizens' arm authorized by the COMELEC to conduct a parallel count, and the Kapisanan ng mga Brodkasters sa Pilipinas or KBP;
- h) **Printed Election Returns** refers to the copy of the election returns printed by the PCOS machine on a paper, and authenticated by the manual signatures and thumbmarks of the members of the Board of Election Inspectors (BEI).

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- i) **Electronic Transmission** refers to the act of conveying data in electronic form from one location to the other.
- j) **Canvass Proceedings** refers to the proceedings that involve the consolidation of precinct election results at the municipal, city or district level; district election results at the municipal or city level; municipal or city election results at the provincial level; and provincial election results at the national level, be it the COMELEC or Congress. It also include the formal proclamation of the election winners at the various canvass levels.
- k) **Consolidation Machine** refers to the machine used at the canvass proceedings to consolidate precinct results, municipal and city results, provincial results, as the case may be, for purposes of getting the total votes of all candidates at a particular canvass level.
- l) **Statement of Votes by Precinct, Municipality, City, District, Province, or Overseas Absentee Voting (OAV) Station** refers to a document in electronic and in printed form generated by the canvassing or consolidating machines or computers during the canvass proceedings. This document records the votes obtained by candidates in each precinct, municipality, city, district, province, or OAV Station, as the case may be.
- m) **City/municipal/district/provincial certificate of canvass** refers to a document in electronic and in printed form containing the total votes in figures obtained by each candidate in a city/municipality/district/ province, as the case may be, the electronic form of which is the official canvass result in the aforementioned jurisdictions and is the one electronically transmitted to a higher canvass level.
- n) **Certificate of Canvass and Proclamation** refers to the official document in printed form that contains the name of all candidates who obtain the highest number of votes in a particular constituency and certifies to said candidates' proclamation as winners
- o) **Data Storage Device** refers to the device where electronic documents are stored and from which said data may be obtained when necessary to verify the accuracy and correctness of election data. It includes the back-up storage device in which authentic electronic copies of said data are also stored.
- p) **Audit Log** refers to the document that contains the list of all activities performed by the PCOS machines from the time that it was powered-on, until the time when closed.
- q) **Electronic document** refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored processed, retrieved or produced electronically. It includes

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signed documents and any print-out or output, readable by sight or other means, which accurately reflects the electronic document.

For purposes of these Rules, electronic documents refer to either the picture image of the ballots and electronic copies of the election returns, of statements of votes, of certificates of canvass, and of the other electronic data relative to the processing done by the PCOS machines and the various consolidation machines.

PART II PRE-PROCLAMATION CONTROVERSIES

Rule 3

Coverage of Pre-Proclamation Controversies

Section 1. *Pre-Proclamation Controversy.* A pre-proclamation controversy refers to the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties, or by any accredited and participating party list group, before the board or directly with the Commission. It covers only two issues:

- a. Illegal composition of the Board of Canvassers (BOC);
- b. Illegal proceedings of the BOC.

The basis of the canvass shall be electronically transmitted results.

Section 2. *Jurisdiction of the Commission in Pre-Proclamation Controversies.* – COMELEC has exclusive jurisdiction in pre-proclamation controversies arising from national, regional or local elections.

A pre-proclamation controversy may be raised by any candidate or by any registered political party, organization, or coalition of political parties before the BOC, or directly with the Commission.

Issues affecting the composition or proceedings of the Boards may be initiated by filing a verified petition before the Board or directly with the Commission.

If the petition is filed directly with the Board, its decision may be appealed to the Commission within three (3) days from issuance thereof. However, if commenced directly with the Commission, the verified petition shall be filed immediately when the board begins to act illegally, or at the time of the

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appointment of the member of the board whose capacity to sit as such is objected to.

Section. 3. Rights of Political Parties and Candidates Before the Board of Canvassers in Pre-Proclamation Cases. -

- a) All registered political parties, organizations, or coalitions of political parties, and accredited citizens' arms, and candidates, have the right to be present and to be represented by counsel during the canvass of election returns, or certificates of canvass.
- b) Only one counsel may argue for each registered political party, organization, or coalition of political parties, accredited citizens' arm or candidate.
- c) No dilatory action shall be allowed by the BOC. It may impose time limits for oral arguments.
- d) All registered political parties, organizations, or coalitions of political parties, and candidates, are entitled to obtain a copy of the Statement of Votes per precinct and a copy of the certificate of canvass duly authenticated by the BOC.

Rule 4

Illegal Composition or Proceedings of the Board of Canvassers

Section 1. Illegal Composition of the Board of Canvassers. - There is illegal composition of the BOC when, among other similar circumstances, any of the members do not possess legal qualifications and appointments. The information technology capable person required to assist the BOC by Republic Act No. 9369 shall be included as among those whose lack of qualifications may be questioned.

Section 2 - Illegal Proceedings of the Board of Canvassers.— There is illegal proceedings of the BOC when the canvassing is a sham or mere ceremony, the results of which are pre-determined and manipulated as when any of the following circumstances are present:

- a) precipitate canvassing;
- b) terrorism;
- c) lack of sufficient notice to the members of the
- d) Improper venue

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Section 3. Where and How Commenced. - Questions affecting the composition or proceedings of the BOC may be initiated in the BOC or directly with the Commission, with a verified petition, clearly stating the specific ground/s for the illegality of the composition and/or proceedings of the board.

Section 4. When to File Petition. - The petition questioning the illegality, or the composition and/or proceedings of the BOC shall be filed immediately when the BOC begins to act as such, or at the time of the appointment of the member whose capacity to sit as such is objected to, if it comes after the canvassing of the Board, or immediately when the proceedings become illegal.

Section 5. Procedures for Petition on the Ground of Illegal Composition and Proceedings of the Board of Canvassers.

a) In case the petition is filed before the BOC:

- a.1) Upon receipt of the verified petition, the BOC shall immediately announce the fact of the filing of said petition and the ground/s raised therein.
- a.2) The BOC shall immediately deliberate on the petition, and within a period of twenty-four (24) hours, make a prompt resolution thereon, which resolution shall be reduced into writing.
- a.3) Should the BOC decide in favor of the petition, it shall immediately inform the Commission of its resolution. Thereafter, the Commission shall make the appropriate action thereon.
- a.4) In no case shall the receipt by the BOC of the electronically transmitted precinct, municipal, city, or provincial results, be suspended by the filing of said petition.
- a.5) The petitioner may appeal an adverse resolution by the BOC to the COMELEC, by notifying the BOC of his or her intent to appeal, through a verbal, and a written and verified Notice of Appeal. The notice on the BOC shall not suspend the formal proclamation of the official results of the election, until the final resolution of the appeal.
- a.6) Within forty-eight (48) hours from such notice to the BOC, the petitioner shall submit before the Board a Memorandum on Appeal stating the reasons why the resolution being questioned is erroneous and should be reversed.
- a.7) Upon receipt by the BOC of the petitioner's memorandum on appeal, the Board shall forward the entire records of the petition at the expense of the petitioner.
- a.8) Upon receipt of the records herein referred to, the petition shall be docketed by the Clerk of Commission and submitted to the COMELEC en banc for consideration and decision.

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a.9) Within five (5) days therefrom the COMELEC en banc shall render its decision on the appeal.

b) If filed directly with the Commission, the petition shall be heard by the COMELEC *en banc* under the following procedures. Upon receipt of the petition by the COMELEC, the Clerk of the Commission shall docket the same and forthwith send summons to the BOC concerned with an order directing it to submit, through the fastest verifiable means available, its answer within forty-eight (48) hours.

The COMELEC en banc shall resolve the petition within five (5) days from the filing of the answer, or upon the expiration of the period to file the same.

Section 6. *Illegal Proceedings Discovered after Proclamation.* - If the illegality of the proceedings of the BOC is discovered after the official proclamation of the supposed results, a verified petition to annul the proclamation may be filed before the COMELEC within ten (10) days after the day of proclamation. Upon receipt of the verified petition, the Clerk of the Commission shall have the same docketed and forthwith issue summons to the parties to be affected by the petition, with a directive for the latter to file their answer within five (5) days from receipt. Thereafter the case shall be deemed submitted for resolution, which shall not be later than seven (7) days from receipt of the answer.

Rule 5

Canvass on Manually Prepared Election Returns

Section 1. *Canvass of Manually Prepared Election Returns.* - If by reason of the implementation of a continuity plan, election returns and/or certificate of canvass are manually prepared and transported to the BOC for canvass, said continuity plan together with the General Instructions for the Board of Canvassers shall primarily apply, supplemented whenever applicable, by the regular COMELEC Rules of Procedure and these rules.

PART III ELECTION PROTEST

Rule 6 Election Protest

Section 1. *Jurisdiction of the Commission on Elections.* - The Commission on Elections, through any of its two Divisions, shall have jurisdiction over the following:

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original jurisdiction over all election protests involving elective regional (the autonomous regions), provincial, and city officials.

Section 2. Election protest. - A petition contesting the elections or returns of an elective regional, provincial, or city official shall be filed with the Commission by any candidate who was voted for in the same office and who received the second or third highest number of votes or, in a multi-slot position, was among the next four candidates following the last ranked winner duly proclaimed, as reflected in the official results of the election contained in the Statement of Votes. The party filing the protest shall be designated as the protestant; the adverse party shall be known as the protestee.

Section 3. How Initiated. - An election protest or petition for quo warranto shall be filed directly with the Commission in ten (10) legible copies plus such number of copies corresponding to the number of protestees, within a non-extendible period of ten days following the date of proclamation.

Each contest shall refer exclusively to one office but contests for offices of the Sangguniang Pampook, Sangguniang Panlalawigan or Sangguniang Panglungsod may be consolidated in one case.

Section 4. Modes of service and filing. - Service and filing of pleadings, including the initiatory petition and other papers, shall be done personally. Except with respect to papers emanating from the Commission, a resort to other modes of service must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule shall be a cause to consider the pleading or paper as not filed.

Section 5. Petition must be verified and accompanied by a certificate of non-forum shopping. - An election protest shall be verified by an affidavit stating that the affiant has read the petition and that the allegations therein are true and correct of affiant's own knowledge or based on authentic records. A verification based on "*information and belief*" or upon the "*knowledge, information and belief*" is not a sufficient verification.

The protestant shall personally sign the certificate of non-forum shopping which must be annexed to the election protest. An unverified petition or one with insufficient verification or unaccompanied by a certificate of non-forum shopping shall be dismissed outright and shall not suspend the running of the reglementary period to file an election protest.

Section 6. Pendency of pre-proclamation controversy. - The pendency of a pre-proclamation controversy involving the validity of the proclamation as defined by law shall suspend the running of the period to file an election protest.

Section 7. Contents of the protest or petition. - An election protest or petition for quo warranto shall specifically state the following facts:

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- a) The position involved
- b) That the protestant was a candidate who has duly filed a certificate of candidacy and has been voted for the same office.
- c) The date of proclamation; and
- d) The number of votes credited to the parties per proclamation.

An election protest shall also state:

- e) The total number of precincts of the region, province or city concerned;
- f) The protested precincts and votes of the parties in the protested precincts per the Statement of Votes By Precinct or, if the votes of the parties are not specified, an explanation why the votes are not specified;
- g) A detailed specification of the acts or omissions complained of showing the electoral frauds, anomalies or irregularities in the protested precincts.

Section 8. Docketing and Raffle of Protest. - The Director of the Election Contest and Adjudication Department (ECAD) shall immediately docket the Protest and raffle the case to either the First or Second Division of the Commission.

Section 9. Summary dismissal of election contest. - The Commission shall summarily dismiss, *motu proprio*, an election protest and counter-protest on the following grounds:

- a) The Commission has no jurisdiction over the subject matter;
- b) The protest is insufficient in form and content as required in Section 7 hereof;
- c) The petition is filed beyond the period prescribed in these rules;
- d) The filing fee is not paid within the period for filing the election protest or petition for quo warranto; and
- e) In case of protest where a cash deposit is required, the cash deposit is not paid within fifteen (15) days from the filing of the protest.

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Rule 7 Summons

Section 1. Summons. - Within three (3) days from the filing of the protests, the Clerk of the Commission or the Division concerned shall issue the corresponding summons to the protestee or respondent, together with a copy of the protest, requiring the filing of an answer within a non-extendible period of five days from notice.

Section 2. Service of summons. - The summons shall be served immediately upon its issuance by handing a copy to the protestee or respondent in person or, in case of refusal of the protestee or respondent to receive and sign for it, by tendering the same. If, for justifiable causes, the protestee or respondent cannot be served in person as provided above, service may be effected by leaving copies of the summons at:

- a) The residence of protestee or respondent, as stated in the certificate of candidacy he filed, with some person of suitable age and discretion residing therein, or
- b) The office or regular place of business of protestee or respondent with some competent person in charge thereof.

Section 3. By whom served. - The summons shall be served by a bailiff of the Commission or Division or upon request of the Commission or Division, by the Sheriff of any Court in the place where the parties to be served reside or for special reasons, by a person especially authorized by the Commission or Division.

Section 4. Return. - When the service has been completed by personal service, the server shall give notice thereof, by registered mail, to the protestant or his counsel and shall return the summons to the Clerk of the Commission who issued it, accompanied with the proof of service.

Section 5. Proof of Service. - Proof of service of summons shall be made in the manner provided for in the Revised Rules of Court of the Philippines.

Rule 8 Answer and Counter-Protest

Section 1. Verified answer; counter-protest. - Within five days from receipt of the summons and a copy of the protest the protestee shall file an answer in ten (10) legible copies, with proof of service of a copy upon the protestant. The answer shall be verified and may set forth admissions.

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denials, special and affirmative defenses and a compulsory counterclaim. The protestee may incorporate a counter-protest in the answer.

The counter-protest shall specify the counter-protested precincts and any votes of the parties therein per the Statement of Votes, or if not so specified, an explanation why the votes are not specified, and a detailed specification of the acts or omissions complained of showing the electoral frauds, anomalies or irregularities in the counter-protested precincts.

Section 2. Answer to counterclaim or counter-protest. - The protestant shall answer the counterclaim or counter-protest within a non-extendible period of five days from notice.

Section 3. Allegations in the answer. -

- (a) *Specific denial.* --A protestee must specify each material allegation of fact the truth of which is not admitted and, whenever practicable, shall set forth the substance of the matters relied upon in support of the denial. The protestee shall specify so much of the averments that are true and material and shall deny the remainder.
- (b) *Allegations not specifically denied deemed admitted.* ---Material averment in the protest other than the amount of unliquidated damages and issues as to the recount or appreciation of ballots, shall be deemed admitted when not specifically denied.

Section 4. Effect of failure to plead. -

- a) *Defenses and objections not pleaded.* ---Defenses and objections not pleaded are deemed waived. However, when it appears from the pleadings or the evidence on record that the Commission has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment, or the statute of limitations, the Commission shall dismiss the claim.
- b) *Compulsory counterclaim or cross-claim not set-up barred.* ---A compulsory counterclaim, or a cross-claim not set up shall be barred.
- c) *Effect of failure to answer.* ---In an election protest that does not involve ballot recount, if the protestee fails to file an answer within the time allowed, the Commission shall, upon motion of the protestant with notice to the protestee, and upon proof of such failure, require the protestant to submit evidence *ex parte*.
- d) However, in the case of election protests involving ballot recount or examination, or verification or re-tabulation of the election returns, the Commission shall order such recount of

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tabulation of election returns. The Commission shall proceed to render judgment based on the results of the recount or re-tabulation of election returns. During the recount or re-tabulation of election returns, only the protestant, or his representative, may participate. The protestee or his duly authorized representative has the right to be present and observe the proceedings without the right to register his comment on the ballots and election returns.

Section 5. How to compute time. - In computing any period of time prescribed or allowed by these Rules, or by order of the Commission, or by any applicable statute, the day of the act or the event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday on the place where the Commission sits, the time shall not run until the next working day.

Section 6. Amendments; limitations. - After the expiration of the period for the filing of the election protest or counter-protest, substantial amendments that broaden the scope of the action, or introduce an additional cause or causes of action may be allowed only upon leave of the Commission. Such leave may be refused if it appears that the motion was made with intent to delay. Any amendment in matters of form, such as a defect in the designation of the parties and other clearly clerical or typographical errors, may be summarily corrected by the Commission at any stage of the proceedings, at its initiative or on motion, provided no prejudice is caused thereby to the adverse party.

Rule 9

Motions

Section 1. Motions must be in writing. - Except those made in open session during the course of the proceedings, all motions shall be in writing.

A motion shall state the order sought to be obtained and the grounds upon which it is based.

Section 2. Proof of service necessary. - No written motion shall be acted upon by the Commission without proof of service on the adverse party.

Section 3. No hearings on motions. - Motions shall not be set for hearing unless the Commission directs otherwise. Oral argument in support thereof shall be allowed only upon the discretion of the Commission. The adverse party may file opposition five days from receipt of the motion, upon the expiration of which such motion is deemed submitted for resolution. The Commission shall resolve the motion within five days.

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Rule 10

Prohibited Pleadings

Section 1. *Prohibited pleadings and motions.* - The following pleadings, motions or petitions shall not be allowed:

- a) Motion to dismiss except on the ground of lack of jurisdiction over the subject matter;
- b) Motion for a bill of particulars;
- c) Demurrer to evidence;
- d) Motion for new trial, or for reconsideration of a judgment, or for reopening of trial;
- e) Petition for relief from judgment;
- f) Motion for extension of time to file pleadings, affidavits or other papers;
- g) Memoranda, except when required by the Commission in an Order;
- h) Motion to declare the protestee or respondent in default;
- i) Dilatory motion for postponement;
- j) Motion to inhibit the Commissioner/s except on clearly valid grounds;
- k) Reply or rejoinder; and
- l) Third-party complaint.

Section 2. *Grounds to dismiss must be set up in the answer.* - All grounds to dismiss an election protest must be set-up or pleaded as affirmative or special defenses. Defenses not raised are deemed waived. The Commission may, in its discretion, hold a preliminary hearing on the grounds so pleaded.

Rule 11

Filing fees and cash deposits

Section 1. *Filing fees.* - No protest, counter-protest shall be accepted for filing without the payment of a filing fee in the amount of Ten Thousand Pesos (P10,000.00) for each interest.

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If claims for damages and attorney's fees are set forth in a protest or counter-protest, additional filing fees shall be paid in accordance with the schedule provided for in Rule 141 of the Rules of Court, as amended.

Section 2. Cash Deposit. - (a) In addition to the fees prescribed in the preceding section, the protestant on an election protest requiring recount of ballots or re-tabulation of election returns, or which may require the bringing to the Commission of copies of other election documents, printed or electronic, as well as the machines or devices to which electronic election documents are stored or may be processed, shall make a cash deposit with the Commission in the following amounts:

1. One Thousand Five Hundred Pesos (P1,500.00) for each precinct involved in the protest or counter-protest; provided that, in no case shall the deposit be less than Twenty-Five Thousand Pesos (P25,000.00) to be paid upon the filing of the election protest (counter-protest);
2. If the amount to be deposited does not exceed One Hundred Thousand Pesos (P100,000.00), the same shall be paid in full within ten days after the filing of the protest; and
3. If the deposit exceeds One Hundred Thousand Pesos (P100,000.00), a cash deposit in the amount of One Hundred Thousand Pesos (P100,000.00) shall be made within ten days after the filing of the protest.

The balance shall be paid in such instalments as may be required by the Commission with at least five days advance notice to the party required to make the deposit.

The cash deposit shall be applied by the Commission to the payment of compensation of Recount Committees as provided under Section 3, Rule 17 of these Rules and of all expenses incidental to the recount but not limited to supplies and miscellaneous expenses of the recount committee. When the Commission determines that the circumstances so demand, as when the deposit has been depleted, it may require additional cash deposits. Any unused cash deposit shall be returned to the party making the same after complete termination of the protest or counter-protest.

The same amount of cash deposit shall be required from the protestee (counter-protestant), should continuation of recount be ordered. Once required, the protestee (counter-protestant) shall pay the cash deposit within a non-extendible period of three days from receipt of the corresponding order.

(b) Failure to make the cash deposits required within the prescribed time limit shall result in the automatic dismissal of the protest, or counter-protest.

(c) The Division Clerk of the Commission or Overall Chairman of the Recount Committee shall liquidate any cash advance granted to him/her for the purchase of supplies within a non-extendible period of thirty (30) days from date of termination of the recount.

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Rule 12

Production and Custody of Ballot Boxes, Election Documents, Data Storage Devices, and Machines Used in the Elections

Section 1. Issuance of precautionary protection order. - Where the allegations in a protest so warrant, and simultaneously with the issuance of summons, the Commission shall order the municipal treasurer and election officer, and the responsible personnel and custodian to take immediate steps or measures to safeguard the integrity of all the ballot boxes, lists of voters with voting records, books of voters and other documents or paraphernalia used in the election, as well as data storage devices containing electronic data evidencing the conduct and the results of elections in the contested precincts.

Section 2. When ballot boxes and election documents are brought before the Commission. - Within forty-eight hours from receipt of the answer with counter-protest, if any, and whenever the allegations in a protest or counter-protest so warrant and when it finds the same necessary, the Commission shall order the ballot boxes with their keys, lists of voters with voting records, books of voters, the electronic data storage devices, and other documents, paraphernalia, or equipments relative to the precincts involved in the protest or counter-protest, to be brought before it.

The Commission shall notify the parties of the date and time for the retrieval from their respective custodians of the ballot boxes, other election documents, data storage devices, equipments. The parties may send representatives to witness the activity. The absence, however, of a representative of a party shall not be reason to postpone or delay the bringing of the ballot boxes, election documents, and data storage devices, into the custody of the Commission.

The Commission, in its discretion, may seek the assistance of the Philippine National Police or the Armed Forces of the Philippines in ensuring the safe delivery of the ballot boxes and election paraphernalia into the custody of the Commission.

Where any of the ballot boxes, ballots, election returns, election documents or paraphernalia mentioned in the first paragraph above are also involved in election contests before other *fora*, such as the Presidential Electoral Tribunal, the Senate Electoral Tribunal, the House of Representatives Electoral Tribunal, which, under COMELEC Resolution No.2812 dated 17 October 1995, have preferential right over the custody and recount of ballots involved in simultaneous protests, the Commission shall make the appropriate coordination and request with the tribunal involved as to temporary prior custody of ballot boxes and recount of ballots and other documents and storage devices, or the synchronization of such recount of ballots. The expenses necessary and incidental to the bringing of the ballot boxes, election documents, and devices shall be shouldered and promptly paid.

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protestant and the counter-protestant, if any, in proportion to the precincts involved. The expenses necessary and incidental to the return of the ballot boxes, election documents, and storage devices to their original custodians or the proper tribunal after the termination of the case shall be shared proportionately by the protestant and protestee based on the number of precincts respectively contested by them.

Rule 13

Preliminary Conference

Section 1. Preliminary conference; mandatory. - Within three days after the filing of the last responsive pleading allowed by these rules, or the expiration of the same period without any responsive pleading having been filed, the Commission shall conduct a mandatory preliminary conference among the parties to consider:

- a) The simplification of issues;
- b) The necessity or desirability of amendments to the pleadings;
- c) The possibility of obtaining stipulations or admission of facts and of documents to avoid unnecessary proof;
- d) The limitation of the number of witnesses;
- e) The nature of the testimonies of the witnesses and whether they relate to evidence *aliunde*, the ballots or otherwise;
- f) The withdrawal of certain protested or counter-protested precincts (especially those where the ballot boxes or ballots are unavailable or are missing and cannot be located or destroyed due to natural disasters or calamities);
- g) The number of recount committees to be constituted;
- h) The procedure to be followed in case the election protest or counter-protest seeks, wholly or partially, the examination, verification or re-tabulation of election returns; and
- i) Such other matters as may aid in the prompt disposition of the case.

Section 2. Notice through counsel. - The notice of preliminary conference shall be served on the counsel or on the party who has no counsel. Notice to counsel is notice to the party, as counsel is charged with the duty to notify the party represented.

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Section 3. *Appearances of parties.* - It shall be the duty of the parties and counsel to appear before the Commission in person at the preliminary conference.

Section 4. *Preliminary conference brief.* - The parties shall file with the Commission and serve on the adverse party, in such manner as shall ensure their receipt at least one day before the date of the preliminary conference, their respective briefs which shall contain the following:

- a) A summary of admitted facts and proposed stipulation of facts;
- b) The issues to be tried or resolved;
- c) The pre-marked documents or exhibits to be presented, stating their purpose;
- d) A manifestation of their having availed or their intention to avail themselves of discovery procedures or referral to commissioners;
- e) The number and names of the witnesses, their addresses, and the substance of their respective testimonies. The testimonies of the witnesses shall be by affidavits in question and answer form as their direct testimonies, subject to oral cross examination;
- f) A manifestation of withdrawal of certain protested or counter-protested precincts, if such is the case;
- g) The proposed number of recount committees and names of their representative, and their alternates; and
- h) In case the election protest or counter-protest seeks the examination, verification or re-tabulation of election returns, the procedure to be followed.

Section 5. *Failure to file brief.* - Failure to file the brief or to comply with its required contents shall have the same effect as failure to appear at the preliminary conference.

Section 6. *Effect of failure to appear.* - The failure of the protestant or counsel to appear at the preliminary conference shall be cause for dismissal, *motu proprio*, of the protest or counter-protest. The failure of the protestee or counsel to appear at the preliminary conference gives the Commission the discretion to allow the protestant to present evidence *ex parte* and render judgment based on the evidence presented:

Section 7. *Preliminary conference order.* - Within three days following the date of the preliminary conference, the Commission shall issue an order summarizing the matters taken up and stipulations or agreements reached during the conference. The Commission shall specify

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preliminary conference order when the recount of ballots will commence, which shall be within five days from the termination of the preliminary conference.

Rule 14

Subpoena

Section 1. Subpoena Ad Testificandum or Subpoena Duces Tecum.

- Subpoena *ad testificandum* or subpoena *duces tecum* may be issued by the Division *motu proprio*, or upon request of the parties in any case.

Section 2. Form and Contents. - A subpoena shall be signed by the Clerk of the Commission concerned. It shall state the name of the Division issuing it and the title of the action; it shall be directed to the person whose attendance is required, and in the case of a subpoena *duces tecum*, it shall also contain a reasonable description of the books, documents or things demanded which may appear *prima facie* relevant.

Rule 15

Recount of Ballots

Section 1. Start of recount. - The recount of ballots shall commence on the date specified in the preliminary conference order, unless rescheduled by Order of the Division.

Section 2. Recount committee; under the supervision of the Commission. - There shall be constituted such number of recount committees as may be necessary. The list of the recount committees shall be submitted by the Division Clerk of the Commission, through the Director IV, Electoral Contests Adjudication Department, to the Presiding Commissioner of either the First or Second Division. Each recount committee shall be composed of a Recount Coordinator/Chairman who shall be a lawyer of the Commission, recorder, clerk, typist and ballot box custodian and one representative each from the protestant and the protestee. The Commission shall designate the Recount Coordinators/Chairman from among its personnel. The parties shall also designate their respective alternative representatives.

The recount committee shall conduct the recount in the Commission's premises or at such other places as may be designated by the Commission, but in every case under its strict supervision. The members of the Recount Committee shall discharge their duties with the highest degree of integrity, conducting the proceedings with the same dignity and discipline as undertaken by the Commission itself. They shall exercise extra-ordinary

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diligence and take precautionary measures to prevent the loss, disappearance or impairment of the integrity of the ballots and the other election documents, whether electronic or printed, and other election paraphernalia.

Section 3. Compensation of the members of the Recount Committee. - The Commission shall fix the compensation of the members of the Committee including the fees for supplies and materials at One Thousand Five Hundred Pesos (1,500) per clustered precinct and shall be distributed as follows:

a. Chairman	P520.00.
b. Recorder	P240.00
c. Ballot Box Custodian	P240.00
d. Typist	P240.00
e. Supplies/materials	P184.00

The amount of P6.00 shall also be allocated for storage of the election paraphernalia and P50.00 for the honoraria of the warehouse handlers. The Representatives of the parties shall be directly compensated by their respective principals or by parties themselves.

Section 4. Continuous Recount. - Once commenced, the recount shall continue from day to day as far as practicable until terminated.

- a) *Period for Recount.* ---recount shall be conducted from 8:30 o'clock in the morning to 12:00 noon and from 1:30 to 4:30 o'clock in the afternoon from Monday to Friday, except on non-working holidays. The members of the Recount Committee may take a fifteen-minute break in each session.
- b) *Recount to continue even if a party representative is absent or late.* --- The recount of ballots shall not be delayed or postponed by reason of the absence or tardiness of a party representative as long as the Recount Coordinator and one party representative are present. The Commission may at any time designate another Recount Coordinator if the regular Recount Coordinator fails for any reason to report.
- c) *If the representative of the protestee is absent or late.* ---If the representative of the protestee is absent or late for thirty minutes and no alternate appears as a substitute, the recount shall, nevertheless, commence; the protestee shall be deemed to have waived the right to appear and to object to the ballots in the precinct or precincts scheduled for recount on that particular day.
- d) *If the representative of protestant or counter-protestant, or of both parties fail to appear.* ---If the representative of the protestant, or of both parties and alternates fail to appear for no justifiable reasons within one hour after fixed hours from the start of the recount, the

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ballot boxes scheduled for that day, and the corresponding keys in the possession of the chairperson, shall be returned to the ballot box custodian of the Commission and shall no longer be recounted; it is understood that the parties waive their right to recount the same, and the Recount Coordinator concerned shall state such facts in the corresponding Recount report.

Section 5. Prohibited access. - During the recount of ballots, no person other than the Commission, the clerk of the Commission, the Recount Coordinators and the members of the recount committees, the parties and their duly authorized representatives, shall have access to the recount area.

Section 6. Conduct of the Recount. - The recount of the votes on the ballots shall be done manually and visually and according to the procedures hereunder:

- a) At the preliminary conference the date and the place of the recount and the number of the recount committees shall be set.
- b) At the appointed place and day, the recount committee/s shall convene.
- c) At the same place and day, the ballot boxes containing the ballots from the protested precincts, the data storage device used in said precincts, as well as the machine or any device that can be used to authenticate or assure the genuineness of the ballots shall be brought to the venue of the recount.
- d) The different recount committees will be provided with an adequate workspace, with tables and chairs that would enable them to perform the recount in an efficient and transparent manner.
- e) The recount committee, upon the request in writing of parties, will then randomly pick the precinct from which they would do the recount.
- f) Before opening the ballot box, the recount committee shall note its condition as well as that of the locks or locking mechanism and record the condition in the recount report. From its observation, the recount committee must also make a determination as to whether the integrity of the ballot box has been preserved.
- g) The ballot box shall then be opened and the ballots shall be taken out. The "valid" ballots shall first be counted, without regard to the votes obtained by the parties. This will be followed by the counting of the torn, unused and stray ballots, as classified at the polling place.
- h) The votes appearing in election returns copy for the ballot box shall then be recorded in the minutes.
- i) Prior to the actual conduct of the recount of the votes the recount committee must authenticate each and every ballot to make

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they were the same ballots that were cast and fed to the PCOS machine during the elections. The authentication shall be through the use of the PCOS machine actually used during the elections in the subject precinct, or by another device certified by the Commission as one that can perform the desired authentication requirement through the use of bar code and ultra-violet ray code detection mechanism.

- j) Only when the recount committee, through the recount coordinator, determines that the integrity of the ballots has been preserved, will the recount proceed.
- k) Upon such determination, the recount committee shall then look at the ballot and count the votes as registered in each and every one of them for the contested position.
- l) In looking at the shades or marks used to register votes, the recount committee shall bear in mind that the will of the voters reflected as votes in the ballots shall as much as possible be given effect, setting aside any technicalities. Furthermore, the votes thereon are presumed to have been made by the voter and shall be considered as such unless reasons exist that will justify their rejection. However, marks or shades which are less than 50% of the oval shall not be considered as valid votes. Any issue as to whether a certain mark or shade is within the threshold shall be determined by feeding the ballot on the PCOS machine, and not by human determination.
- m) The rules on appreciation of ballots under Section 211 of the Omnibus Election Code shall apply suppletorily when appropriate.
- n) There shall be a tally sheet, of at least 5 copies, plus additional copies depending on the number of additional parties, that will be used for the tallying of the votes as they are counted, through the use of the tara or sticks.
- o) After all the ballots from one ballot box have been counted, the recount committee shall secure the contested ballots and complete the recount report for said precinct. Thereafter, it shall proceed to recount the votes on the ballots from the next precinct.
- p) In case of multiple recount committees, the recount shall be done simultaneously.
- q) In the event that the recount committee determines that the integrity of the ballots and the ballot box were not preserved, as when there is proof of tampering or substitution, it shall proceed to instruct the printing of the picture image of the ballots of the subject precinct stored in the data storage device for the same precinct. The commission shall provide a non-partisan technical person who shall conduct the necessary authentication process to ensure that the data or image stored is genuine and not a substitute. It is only upon

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determination that the printed picture image can be used for the recount.

Section 7. Preparation and submission of recount report. - The committee shall prepare and submit to the Commission a recount report per precinct stating the following:

- a) The precinct number;
- b) The date, place and time of recount;
- c) The condition and serial numbers of the following:
 - c.1) Ballot boxes;
 - c.2) Locks;
 - c.3) Data storage device
- d) The votes of the parties per physical count of the paper ballots;
- e) The votes of the parties per ballot-box copy of the election returns;
- f) The number of ballots questioned by the parties indicating there-in the exhibit numbers;
- g) The number of torn, unused and stray ballots;
- h) The entries in the Minutes of Voting and Counting, particularly:
 - h.1) The number of registered voters;
 - h.2) The number of voters who actually voted;
 - h.3) The number of official ballots together with their serial numbers used in the election;
 - h.4) The number of ballots actually used indicating the serial numbers of the ballots; and
 - h.5) The unused ballots together with their serial numbers.

The recount forms shall be made available prior to the recount. The per-precinct recount report shall be signed and certified to by the recount coordinator and the representatives of the parties, and shall form part of the records of the case. The tally sheet used for the recount shall be attached to the report.

In addition to the per-precinct recount report, the recount committee shall also prepare and submit to the court, within seven (7) days from the termination of the recount, a committee report summarizing the data, votes, questions on the ballots, significant observations made in the recount of ballots from each of the protested precincts and, later from the counter-protesters.

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precincts, and comments and objections in case of disagreement between committee members. Each party furnished with a copy of the committee report may submit their comments thereon within a non-extendible period of seven days from notice.

Section 8. Inquiry as to security markings and vital information relative to ballots and election documents. - When a recount of ballots is ordered, and for the guidance of the members of the Recount Committees, the Commission shall give advice and instructions to the committee on the security markings on the ballots and election documents. The commission shall likewise designate a technical person who shall assist the Recount Committee in authenticating electronic documents if needed, as well as in transforming the same to a form that can make them observable to the Committee.

Rule 17

Photocopying of Ballots

Section 1. Photocopying simultaneous with recount. - On motion of a party, the Commission may allow the photocopying or reproduction of paper ballots and election documents, upon such terms and conditions as it may impose. The photocopying or reproduction, if allowed, must start at the commencement of recount and, as far as practicable, must be completed simultaneously with the termination of recount.

Section 2. Where conducted; parties to provide own photocopying units. - Photocopying shall be done within the premises of the COMELEC, or at or near the area where the recount is conducted, and shall be under the supervision of the Clerk of the Commission. The party concerned shall provide an efficient photocopying unit and shall bear all expenses relative thereto.

Rule 18

Presentation of Evidence

Section 1. Presentation and reception of evidence; order of hearing. - The reception of evidence on all matters or issues raised in the protest and counter-protests shall be presented and offered in a hearing upon completion of (a) the recount of ballots, or re-tabulation of election documents or (b) the technical examination, if warranted.

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Reception of evidence shall be made in accordance with the following order of hearing:

- a) The protestant shall present evidence in support of the protest;
- b) The protestee shall then adduce evidence in support of the defense, counterclaim or counter-protest, if any;
- c) The parties may then respectively offer rebutting evidence only, unless the Commission for good reasons, in the furtherance of justice, permits them to offer evidence upon their original case; and
- d) No sur-rebuttal evidence shall be allowed.

In offering testimonial evidence, the party shall require the proposed witness to execute an affidavit which shall be considered as the direct testimony, subject to the right of the adverse party to object to its inadmissible portions and to orally cross-examine the witness. The affidavit shall be based on personal knowledge, shall set forth facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify on the matters stated therein. The affidavit shall be in question and answer form. The affidavit shall be submitted to the Commission and served on the adverse party at least three days before the hearing. Failure to submit the affidavit of a witness within the specified time shall constitute a waiver of the party's right to present testimonial evidence.

The one-day-cross-examination-of-witness rule, that is, a witness has to be fully cross-examined in one day only shall be strictly adhered to. The Commission, at its discretion, may extend the cross-examination for justifiable reasons.

The recount reports, as well as the objected and claimed ballots referred to therein, shall automatically form part of records of the Commission and may be adopted by the parties as their evidence.

Section 2. Offer of evidence. - The Commission shall consider no evidence that has not been formally offered. Formal offer of documentary evidence shall be done in writing after the last day of hearing allowed for each party. The opposing party shall be required to immediately interpose his written objections thereto within five (5) from receipt of formal offer. The Commission shall rule on the offer of evidence not later than five (5) days from receipt of the Comment to the formal offer.

Section 3. Reception of evidence continuous. - Reception of evidence, once commenced, shall continue from day to day as far as practicable until terminated.

Section 4. Adjournments and postponements. - No motion for postponement shall be allowed, except for clearly meritorious reasons, in no case to exceed three times. The filing of dilatory pleadings or motions shall constitute direct contempt of Commission and shall be punished accordingly.

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Section 5. Burden of proof. - Burden of proof is the duty of a party to present evidence of the facts in issue, necessary to establish one's claim or defense.

Section 6. Disputable presumptions. - The following presumptions are considered as facts, unless contradicted and overcome by other evidence:

a) On the election procedure:

- a.1) The election of candidates was held on the date and time set and in the polling place determined by the Commission on Elections;
- a.2) The Boards of Election Inspectors were duly constituted and organized;
- a.3) Political parties and candidates were duly represented by poll watchers;
- a.4) Poll watchers were able to perform their function; and
- a.5) The Minutes of Voting and Counting contains all the incidents that transpired before the Board of Election Inspectors.

b) On election paraphernalia:

- b.1) Ballots and election returns that bear the security markings and features prescribed by the Commission on Elections are genuine;
- b.2) The data and information supplied by the members of the Boards of Election Inspectors in the accountable forms are true and correct; and
- b.3) The allocation, packing and distribution of election documents or paraphernalia were properly and timely done.

c) On appreciation of ballots:

- c.1) A ballot with appropriate security markings is valid;
- c.2) The ballot reflects the intent of the voter;
- c.3) The ballot is properly accomplished;
- c.4) A voter personally prepared one ballot, except in the case of assistors; and
- c.5) The exercise of one's right to vote was voluntary and free

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Section 7. Submission of memoranda. - The Commission may allow the parties to submit their respective memoranda within a non-extendible period of ten days from receipt of the written ruling of the Commission. No supplemental, reply or rebuttal memorandum shall be allowed.

Rule 19

Decisions

Section 1. Rendition of Decision. - The Commission shall decide the election contest within thirty days from the date it is submitted for decision.

An election protest is deemed submitted for decision after completion of the reception of the evidence or, if the parties were allowed to submit memoranda, upon submission of such memoranda or the expiration of the period for the filing, whichever is earlier. In an election protest, the winner shall be the candidate who obtained the plurality of the valid votes cast.

Section 2. Procedure in making Decisions. - The conclusions of the Commission in any case submitted to it for decision shall be reached in consultation before the case is assigned by raffle to a Member for the writing of the opinion. A certification to this effect signed by the Chairman or Presiding Commissioner shall be incorporated in the decision. Any member who took no part, or dissented, or abstained from a decision or resolution must state the reason therefor.

Every decision shall express therein clearly and distinctly the facts and the law on which it is based. In its decision the Commission shall be guided by the principle that every ballot is presumed to be valid unless there is clear and good reason to justify its rejection and that the object of the election is to obtain the true expression of the voters.

Section 3. Several judgments. - In a protest against several protestees, the Commission may, when a several judgment is proper, render judgment against one or more of them, leaving the protest to proceed against the others.

Section 4. When extended Opinion Reserved. - When in a given resolution or decision the writing of an extended opinion is reserved, the extended opinion shall be released within fifteen (15) days after the promulgation of the resolution.

Section 5. Period to File Motion for Reconsideration When Extended Opinion is Reserved. - If an extended opinion is reserved in a decision, the period to file a petition for certiorari with the Supreme Court or to file a motion for reconsideration shall begin to run only from the date the aggrieved party received a copy of the extended opinion.

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Section 6. Promulgation. - The promulgation of a decision of the Commission shall be made on a date previously fixed, of which notice shall be served in advance upon the parties or their counsels personally, or by registered mail, or by telegram, or any verifiable speedy means.

Section 7. Procedure if Opinion is Equally Divided. - When the Commission en banc is equally divided in opinion, or the necessary majority cannot be had, the case shall be reheard, and if on rehearing no decision is reached, the protest or the counter -protest shall be deemed dismissed if originally commenced in the Commission; in appealed cases, judgment or order appealed from shall stand affirmed; and in all incidental matters, the petition or motion shall be denied

Section 8. Duty to certify to the President. - In election protests, if the decision shall be that none of the parties has been legally elected, the Commission shall certify such decision to the President of the Philippines.

Section 9. Duty to Notify Other Agencies of the Government. - As soon as a decision in an election protest becomes final and executory, notices thereof shall be sent to the President, the Secretary of Local Government, the Chairman of the Commission on Audit, and the Secretary of the Sangguniang Pampook in the case of regional officials, the Secretary of the Sangguniang Panlalawigan in the case of provincial officials, and the Secretary of the Sangguniang Panglungsod in the case of city officials.

Section 10. Finality of Decisions or Resolutions. - Unless a motion for reconsideration is seasonably filed, a decision or resolution of a Division shall become final and executory after the lapse of five (5) days following its promulgation.

Rule 20

Motions for Reconsideration

Section 1. Grounds of Motion for Reconsideration. - A motion for reconsideration may be filed on the grounds that the evidence is insufficient to justify the decision, order or ruling; or that the said decision, is contrary to law.

Section 2. Period for Filing Motions for Reconsideration. - A motion to reconsider a decision shall be filed within five (5) days from the promulgation thereof. Such motion, if not *pro forma*, suspends the execution or implementation, of the decision, resolution, order or ruling.

Section 3. Form and Contents of Motion for Reconsideration. - The motion shall be verified and shall point out specifically the findings or conclusions of the decision, resolution, order or ruling which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or the provisions of law alleged to be contrary to such findings or conclusions.

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Section 4. Effect of Motion for Reconsideration on Period to File Petition for Certiorari to the Supreme Court. - A motion to reconsider a decision, resolution, when not pro-forma, suspends the running of the period to elevate the matter to the Supreme Court.

Section 5. How motion for Reconsideration Disposed of. - Upon the filing of a motion to reconsider a decision, resolution, order or ruling of a Division, the ECAD Clerk concerned shall, within twenty-four (24) hours from the filing thereof, notify the Presiding Commissioner. The latter shall within two (2) days thereafter certify the case to the Commission en banc.

Section 6. Duty of ECAD Director to Calendar Motion for Resolution. - The ECAD Director concerned shall calendar the motion for reconsideration for the resolution of the Commission en banc within ten days from the certification thereof.

Section 7. Period to Decide by the Commission En Banc. - The motion for reconsideration shall be decided within fifteen (15) days from the date the case or matter is deemed submitted for decision, unless otherwise provided by law.

Section 8. Finality of Decision. - The decision of the Commission shall become final and executory five days after its promulgation and receipt of notice by the parties.

PART IV MISCELLANEOUS MATTERS

Rule 21

Electronic Evidence

Section 1. Original of an electronic document or data. - An electronic document or data shall be regarded as the equivalent of an original document under the Best Evidence Rule if it is a printout or output readable by site or other means, shown to reflect the data accurately.

Section 2. Copies as equivalent of the originals. - When a document is in two or more copies executed at or about the same time with identical contents, or is a counterpart produced by the same impression as the original, or from the same matrix, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original, such copies or duplicates shall be regarded as the equivalent of the original.

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Notwithstanding the foregoing, copies or duplicates shall not be admissible to the same extent as the original if:

- a) A genuine question is raised as to the authenticity of the original; or
- b) In the circumstances it would be unjust or inequitable to admit a copy in lieu of the original.

Section 3. Affidavit of evidence. - All matters relating to the admissibility and evidentiary weight of an electronic document may be established by an affidavit stating facts of direct personal knowledge of the affiant or based on authentic records. The affidavit must affirmatively show the competence of the affiant to testify on the matters contained therein. The affiant shall be made to affirm the contents of the affidavit in open session and may be cross-examined as a matter of right by the adverse party.

Section 4. Transmittal of Decisions and Orders. - The Clerk of the Commission shall transmit the Commission decision and orders through the fastest means available and through the official fax line to the BOC, and other concerned parties, which shall verify the same and comply with the decision or order.

Rule 22

Authentication of Electronic Documents and Data

Section 1. Burden of proving authenticity. - The person seeking to introduce an electronic document in an election protest has the burden of proving its authenticity.

Section 2. Manner of authentication. - Before any electronic document or data offered as authentic is received in evidence, its authenticity must be proved by any of the following means:

- a) By evidence that it had been digitally signed by the person purported to have signed the same;
- b) By evidence that other appropriate security procedures or devices for authentication of electronic documents were applied to the document; or
- c) By other evidence showing its integrity and reliability to the satisfaction of the judge.

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Rule 23

Costs, Damages and Attorney's Fees

Section 1. Costs; when allowed. - Costs shall be allowed to the prevailing party as a matter of course. The Commission shall have the power, for special reasons, to apportion the costs, as may be equitable. The Commission may render judgment for costs if a protest, or a counter protest is found to be frivolous, double or treble costs may be imposed on the protestant or the counter-protestant.

Section 2. Damages and attorney's fees. - In all election contests, the Commission may adjudicate damages and attorney's fees, as it may deem just and as established by the evidence, if the aggrieved party has included such claims in the pleadings.

Rule 24

Effectivity

Section 1. Effectivity. - These Rules shall be published in two (2) daily newspapers of general circulation and shall take effect on the seventh day following its publication.

Approved this 22nd day of March, 2010, Manila, Philippines.


JOSE A.R. MELO

Chairman


RENE V. SARMIENTO

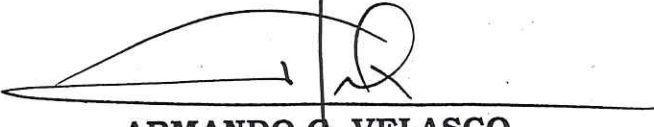
Commissioner

On Official Business
LUCENITO N. TAGLE
Commissioner

On Official Business
ELIAS R. YUSOPH
Commissioner


NICODEMO T. FERRER

Commissioner


ARMANDO C. VELASCO

Commissioner


GREGORIO Y. LARRAZABAL

Commissioner

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Republic of the Philippines
COMMISSION ON ELECTIONS
Manila

**IN THE MATTER OF ADOPTING
RULES OF PROCEDURE FOR
THE RECOUNT OF BALLOTS
SUBJECT OF ELECTION
PROTEST CASES FILED WITH
THE COMMISSION ON
ELECTIONS IN CONNECTION
WITH THE MAY 10, 2010
NATIONAL AND LOCAL
ELECTIONS, AMENDING
PORTIONS OF SECTION 6,
RULE 15 OF COMELEC
RESOLUTION NO. 8804
PROMULGATED ON MARCH
22, 2010.**

MELO , Jose A.R.	Chairman
SARMIENTO , Rene V.	Commissioner
FERRER , Nicodemo T.	Commissioner
TAGLE , Lucenito N.	Commissioner
VELASCO , Armando C.	Commissioner
YUSOPH , Elias R.	Commissioner
LARRAZABAL , Gregorio Y.	Commissioner

x-----x

PROMULGATED: November 30, 2010

- **RESOLUTION NO.** 9104

WHEREAS, on March 22, 2010, the Commission on Elections promulgated Resolution No. 8804, entitled and known as "Comelec Rules of Procedure on Disputes in an Automated Election System in connection with the May 10, 2010 Elections";

WHEREAS, numerous election protest cases were filed with the Commission on Elections in the aftermath of the May 10, 2010 Automated National and Local Elections, seeking recount of the ballots counted and digitally recorded by the Precinct Count Optical Scan (PCOS) machines, in accordance with Rule 15 of Comelec Resolution No. 8804;

WHEREAS, there is a need to formulate rules which would govern the proceedings for the recount of ballots involved in said election protest cases for the proper implementation of the procedural rules explicitly detailed in Comelec Resolution No. 8804;

NOW THEREFORE, in view of the foregoing, the Commission **RESOLVED**, as it hereby **RESOLVES**, to consider and adopt the following Rules of Procedure for the recount of ballots subject of election protest cases filed with the Commission on Elections in connection with the May 10, 2010 National and Local Elections pursuant to Rule 15 of Comelec Resolution No. 8804:

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Section 1. Title. – This resolution shall be known and called as the “Rules of Procedure for the Recount of Ballots subject of Election Protest Cases filed with the Commission on Elections in connection with the May 10, 2010 National and Local Elections pursuant to Rule 15 of Comelec Resolution No. 8804.”

Section 2. Applicability. – It shall apply to all election protest cases filed before the Commission in connection with the May 10, 2010 Automated National and Local Elections, where recounting is involved.

Section 3. Order of Priority of Protested/Counter-Protested Precincts. – The protestant, in case of protest, and the protestee, in case of counter-protest, shall submit in writing to the Over-all Chairman of the Recount Committees the order of priority of clustered precincts in the recounting of contested ballots.

Section 4. Project of Precincts. – The Over-all Chairman of the Recount Committees will request in writing for a copy of the Project of Precincts covering the clustered precincts subject of protest/counter-protest from the Election and Barangay Affairs Department (EBAD) for use as reference in the recount of ballots.

Section 5. Compact Flash (CF) Card Used on May 10, 2010 Automated National and Local Elections. – The Over-all Chairman of the Recount Committees shall request from the Election Records and Statistics Department (ERSD) the compact flash (CF) cards corresponding to the protested/counter-protested clustered precincts used during the May 10, 2010 Automated National and Local Elections (hereinafter referred to as the “May 10, 2010 CF card”).

Section 6. When Ballot Boxes and Elections Documents Are Brought Before The Commission. – Where any of the ballot boxes, ballots, election returns, election documents or paraphernalia subject of a protest or counter-protest are also involved in election contests before other *fora*, such as the Presidential Electoral Tribunal (PET), the Senate Electoral Tribunal (SET), and the House of Representatives Electoral Tribunal (HRET), which, under COMELEC Resolution No. 2812 dated 17 October 1995, have preferential right over the custody and recount of ballots involved in simultaneous protests, the Commission shall make the appropriate coordination and request with the tribunal involved as to temporary prior custody of ballot boxes and recount of ballots and other documents and storage devices, or the synchronization of such recount of ballots.

The expenses necessary and incidental to the bringing of the ballot boxes, election documents, and devices shall be shouldered and promptly paid by the protestant and the counter-protestant, if any, in proportion to the precincts involved. The expenses necessary and incidental to the return of the ballot boxes, election documents, and storage devices to their original custodians or the proper tribunal after the termination of the case shall be shared proportionately by the protestant and protestee based on the number of precincts respectively contested by them.

Section 7. Custody and Sealing of the PCOS Machine. – The Chairman of the Recount Committee shall be the custodian of the PCOS machine for the duration of the recount and shall be

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therefor. The Chairman shall ensure that the PCOS machine's compartment for the back-up CF card shall be appropriately sealed before the commencement of the recount and shall remain sealed throughout the proceedings.

Section 8. Determination of the Integrity of the Ballot Box and Ballots. – Before opening the ballot box of the clustered precinct to be recounted, the ballot box custodian of the Recount Committee shall note the condition of the ballot box as well as that of the locks or locking mechanism, and record said conditions in the Recount Report.

In the event that the Recount Committee determines that the integrity of the ballot box and the ballots was not preserved, as when there is proof of tampering or substitution, the Recount Committee shall record its observation in the Recount Report and set aside the ballot box and ballots of the said protested or counter-protested clustered precinct. It shall then be referred to the Division of the Commission, which will finally decide as to whether the integrity of the ballot box and the ballots had indeed been compromised. If the Division finds that the integrity of the ballot box and the ballots was compromised, it shall order the Recount Committee to utilize the picture image files corresponding to the physical ballots contained in the tampered ballot box for recount purposes.

Section 9. Opening of Ballot Box, Inventory of the Contents Thereof. – If the Recount Committee determines that the integrity of the ballot box and the locks or locking mechanism was preserved, the ballot box shall then be opened and the contents thereof shall be taken out. The typist of the Recount Committee shall make an inventory of the contents and record the following information in the Recount Report:

- (a) clustered precinct number and the precinct number/s composing the cluster;
- (b) date, time, and place of recount (as set in the Preliminary Conference Order);
- (c) the serial numbers and condition of the following:
 - (c.1) ballot boxes;
 - (c.2) padlocks and security seals;
 - (c.3) envelope and paper seal for the Minutes of Voting and Counting of Votes;
 - (c.4) envelope and paper seal for the rejected ballots;
 - (c.5) envelope containing election returns; and
 - (c.6) all other contents found in the ballot box.
- (d) entries in the Minutes of Voting and Counting of Votes prepared by the Board of Election Inspectors, particularly:
 - (d.1) number of registered voters;

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- (d.2) number of voters who actually voted;
 - (d.3) number of official ballots, together with the serial numbers allocated to and received by said precinct in the elections;
 - (d.4) number of ballots actually used in the elections, indicating the serial numbers of said ballots;
 - (d.5) number of unused ballots, together with their serial numbers; and
 - (d.6) number of rejected ballots found inside the ballot box.
- (e) number of votes received by each party as recorded in the election returns copy for the ballot box.

In addition thereto, the Chairman of the Recount Committee shall determine if the integrity of the May 10, 2010 CF Card, iButton and password was preserved. The typist shall record the condition and serial numbers of these election paraphernalia and the paper seal used.

Section 10. Authentication of Ballots. - To facilitate the actual recount of the ballots, the Overall-Chairman shall designate at least one personnel each from the Information Technology Department (ITD) and ERSD as member of the Recount Committee.

A. The ITD personnel shall:

1. configure a new CF card for every contested/counter-protested clustered precinct (hereinafter referred to as the "recount CF card"). For purposes of these rules, "CONFIGURE" shall mean installing specific precinct information to a new CF card, such as voting jurisdiction, candidates' information, number of seats, party affiliation, and positions that will be used for the scanning of ballots by the PCOS machine during the recount proceedings. Configuration of recount CF cards shall be performed at the ITD, COMELEC Main Office and with prior notice to the parties;
2. copy the picture image files of ballots and results from the May 10, 2010 CF card to a new CF card (hereinafter referred to as the "ballot image CF card"). Copying of picture image files shall be performed at the ITD, COMELEC Main Office and with prior notice to the parties;
3. prepare the iButton and password for a protested/counter-protested precinct which should be transmitted in a sealed envelope with proper endorsement documentation; and
4. set up the PCOS machine and the laptop which shall be used to view the picture image files of ballots and results contained in the ballot image CF card. The personnel designated as member of the

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Committee shall be responsible for the operation of the PCOS machine during the recount proceedings.

B. The ERSD personnel shall:

1. provide the May 10, 2010 CF card containing the picture image files of ballots and results used during the May 10, 2010 elections. The ERSD personnel designated as member of the Recount Committee shall at all times maintain custody of the May 10, 2010 CF card and shall be responsible therefor; and
2. if the election returns copy for the ballot box is not found inside the ballot box, provide a certified true copy of the election returns for the protested/counter-protested precinct.

Section 11. Recount Procedure. – The Recount Committee shall be guided by the following procedure in the validation and recount of the ballots:

A. Copying of picture image files of ballots and results from the May 10, 2010 CF card to the ballot image CF card:

1. for the purpose of recounting ballots, one ballot image CF card shall be used for each protested/counter-protested precinct. The May 10, 2010 CF card shall in no way be used in the recounting of ballots. Only the ballot image CF card shall be utilized in viewing picture image files of ballots and results; and
2. the copying of the picture image files of ballots and results from the May 10, 2010 CF card to the ballot image CF card shall be done by the ITD personnel with prior notice to the parties.

B. Validation and Recount:

1. (a) the recorder of the Recount Committee shall physically count the ballots found inside the ballot box and compare the physical count to the total number of ballots recorded on the election returns. Ballots that were rejected by the PCOS machine in the May 10, 2010 elections shall be set aside and shall not be reconsidered in the recount proceedings;
- (b) if the total number of physical ballots does not match the total number recorded in the election returns, the recorder of the Recount Committee shall compare the total number of physical ballots against the total number of picture image files of ballots found in the ballot image CF card;
- (c) if there is still a discrepancy between the total number of picture image files of ballots in the ballot image CF card and the physical count of ballots

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total number of picture image files of ballots in the ballot image CF card shall prevail; and

(d) if there are physical ballots that have no corresponding picture images, such physical ballots shall not be included in the recount proceedings. On the other hand, if there are picture images with no corresponding physical ballots, the picture image files shall still be included in the recount proceedings.

2. (a) if the physical number of ballots matches the total number of ballots recorded in the election returns, validate the authenticity of the ballots with the use of the PCOS machine;

(b) the ITD personnel shall open the PCOS machine, request the Chairman of Recount Committee to enter password, and print initialization report showing zero votes;

(c) the recorder of the Recount Committee shall feed the physical ballots in the PCOS machine which will contain to the recount CF card;

(d) after all the ballots have been scanned, the ITD personnel generate a new set of election returns by selecting the "close voting" option in the PCOS machine;

(e) the chairman of the Recount Committee shall compare the recently-generated election returns with the election returns generated during the May 10, 2010 elections and show the same to the representatives of the protestant and protestee;

(f) if the results are the same, no further action shall be performed and the election protest or counter-protest shall be dismissed; and

(g) if the results of the comparison between the recently-generated election returns and the May 10, 2010 election returns do not match, the recorder of the Recount Committee shall one by one compare the ballots that were fed to the PCOS machine to its corresponding picture image in the ballot image CF card to determine the reason for the discrepancy.

3. To validate the physical ballots against the picture image files stored in the ballot image CF card, sequentially open the picture image files. The typist shall then print all the picture images and the recorder shall compare the barcode located at the bottom-right of the ballot's picture image against the barcode in the physical ballot. Once the picture image matching the physical ballot has been found, the recorder shall check the results contained at the bottom-right

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picture image. The results contained at the bottom-right of the picture image should match the shaded ovals on the physical ballot. If the results do not match, a presumption arises that the ballot box or ballots were tampered with or has been compromised. In such a case, the recorder must compare the physical ballots oval by oval against the picture image to see where the discrepancy lies. In case of such a discrepancy, the picture image of the ballot and the results shown at the bottom-right of the picture image shall prevail; and

4. In case a ballot accepted by the PCOS machine on May 10, 2010 is rejected by the PCOS machine during the recount, the recorder of the Recount Committee shall re-feed the ballot into the PCOS machine in four (4) different orientations. If it is still rejected, the rejected ballot should be fed into the contingency PCOS machine. If some ballots were already scanned and the PCOS machine is subsequently replaced with the contingency PCOS machine, the ballot image CF card must first be re-zeroed and all the previous ballots shall be re-scanned using the contingency PCOS machine.

All incidents during the recount proceedings should be recorded by the typist of the Recount Committee in the Recount Report.

C. For the recount of the ballots, the following shall be required per Recount Committee:

1. one (1) PCOS machine per Recount Committee, the lease for which shall be paid for by the parties, with the May 10, 2010 election digital certificate installed (with another PCOS machine on stand-by as contingency);
2. two (2) or more thermal paper rolls (the number of rolls will depend on the number of copies of the election returns to be printed);
3. one (1) recount CF card;
4. the iButton actually used in the protested/counter-protested clustered precinct during the May 10, 2010 elections;
5. the ballots used during the May 10, 2010 elections for the protested/counter-protested clustered precinct;
6. election returns generated during the May 10, 2010 elections for the protested/counter-protested clustered precinct which are found inside the ballot box;
7. one (1) ballot image CF card which will contain copied picture image files of ballots and results.

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8. one (1) laptop to review the picture images;
9. one printer and the required number of bond paper for the printing of picture images of ballots; and
10. one (1) CF card reader.

Section 12. Completion of Recount. – After all the physical ballots from one (1) ballot box has been scanned and counted by the PCOS machine, the Recount Committee shall secure the contested ballots and complete the Recount Report which shall be submitted to the Commission.

Section 13. Amendatory Provision. – This rules shall amend Section 6, letters (c), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), and (q) of Rule 15, Comelec Resolution No. 8804 dated 22 March 2010.

Section 14. Effectivity. – This Resolution shall take effect after seven (7) days from its publication in two (2) daily newspapers of general circulation in the Philippines.

Section 15. Dissemination. – Let the Education and Information Department (EID), this Commission, cause the publication of this Resolution in two (2) daily newspapers of general circulation in the Philippines.

SO ORDERED.


JOSE A.R. MELO

Chairman


RENE V. SARMIENTO

Commissioner


NICODEMO T. FERRER

Commissioner


LUCENITO N. TAGLE

Commissioner


ARMANDO C. VELASCO

Commissioner


ELIAS R. YUSOPH

Commissioner


GREGORIO Y. LARRAZABAL

Commissioner

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ANNEX 'F'

**IN THE MATTER OF REINSTATING
AND REIMPLEMENTING COMELEC
RESOLUTION NO. 8804 WITH
AMENDMENTS**

Brillantes, Sixto S. Jr. Chairman
Sarmiento, Rene V. Commissioner
Tagle, Lucenito N. Commissioner
Velasco, Armando C. Commissioner
Yusoph, Elias R. Commissioner

Promulgated: March 16, 2011

X-----X

RESOLUTION NO. 9164

WHEREAS, on March 22, 2010, Resolution No. 8804 was promulgated by the Commission on Elections, entitled "*In Re: Comelec Rules of Procedure on Disputes In An Automated Election System in Connection with the May 10, 2010 Elections*";

WHEREAS, on November 30, 2010, the Commission on Elections (COMELEC) promulgated Resolution No. 9104, entitled and known as "*Rules of Procedure for the Recount of Ballots Subject of Election Protest Cases Filed with the Commission on Elections in Connection with the May 2010 National and Local Elections, Amending Section 6, Rule 15 of Comelec Resolution No. 8804 Promulgated on March 22, 2010*";

WHEREAS, it is the constitutional mandate of the Commission on Elections to provide procedural rules that will afford litigants in electoral disputes an inexpensive, speedy, and fair proceedings;

WHEREAS, to be more consistent with the above constitutional mandate, there is a need to REINSTATE and REIMPLEMENT Resolution No. 8804 with amendments;

NOW, THEREFORE, in view of the foregoing, the Commission **RESOLVED**, as it hereby **RESOLVES**, to **REINSTATE** Sections 6 and 7, Rule 15, Rule 17 and Rule 24 and **SUSPEND** Sec. 3, Rule 15 of Resolution No. 8804 as the procedures to be adopted in the recount of ballots in election

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cases under the Automated Election System with the following amendments, modification and additions:

Section 1. Section 6, Rule 15 of Resolution No. 8804 is hereby reinstated and amended to read as follows:

Rule 15
Recount of Ballots

Section 6. **Conduct of the Recount.-** The recount of the votes on the ballots shall be done manually and visually and according to the procedures hereunder:

(a) At the preliminary conference the date and the place of the recount and the number of Recount Committees shall be set.

(b) At least five (5) days prior to the scheduled recount of ballots, the protestant shall submit a list of his designated pilot precincts constituting at most twenty (20%) of the total number of his protested clustered precincts, but in no case exceeding two hundred (200) clustered precincts or be less than twenty (20) clustered precincts, that will best attest to the votes recovered or will best exemplify the merits or legitimacy of his protest.

The recount of the ballots in the remaining contested clustered precincts shall not commence until the Division concerned shall have determined the merit or legitimacy of the protest relative to the pinpointed pilot precincts through appreciation of ballots and other documentary exhibits which the protestant may submit within a non-extendible period of ten (10) days from the completion of the recount of the pilot precincts. Based on the results of such post-recount determination, the Division may dismiss the protest, without further proceedings, if no reasonable recovery was established from the pilot protested precincts, otherwise, the recount of the ballots in the remaining protested clustered precincts shall proceed, to be followed by the recount of the counter-protested clustered precincts, if any.

(c) At the appointed place and day, the Recount Committee/s shall convene and the ballot boxes containing the ballots from the designated pilot precincts, the data storage device used in said precincts, as well as the machine or any device that can be used to authenticate the genuineness of the ballots shall be brought to the venue of the recount.

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(d) The different Recount Committees will be provided with an adequate workspace with tables and chairs that would enable them to perform the recount.

(e) Before the opening of the ballot box, the Recount Committee shall note its condition as well as that of the locks or locking mechanism and record the condition in the recount report. From its observation, the Recount Committee must also make a determination as to whether the integrity of the ballot box has been preserved.

In the event that there are signs of tampering or if the ballot box appears to have been compromised, the Recount Committee shall still proceed to open the ballot box and make a physical inventory of the contents thereof. The committee shall, however, record its general observation of the ballots and other documents found in the ballot box.

(f) Prior to the actual conduct of the recount of the votes, the Recount Committee must authenticate each and every ballot to make sure that they are genuine. The authentication shall be through the use of PCOS machine or through any other device capable of performing the desired authentication requirement through the use of the bar codes and the ultra-violet ray code detection mechanism, at the option of the Commission. The Recount Committee shall also check the ballot ID and the clustered precinct number indicated in each ballot.

(g) Only when the Recount Committee, through its chairman, determines that the integrity of the ballots has been preserved or that no signs of tampering of the ballots are present, will the recount proceed. In case there are signs that the ballots contained therein are tampered, compromised, wet or are otherwise in such a condition that it could not be recounted, the Recount Committee shall follow paragraph (i) of this rule.

(h) The ballot box shall then be opened, and the ballots taken out. The Recount Committee shall then segregate, classify and count the ballots as:

- BALLOTS FOR THE PROTESTANT
 - Including ballots with Identifying Marks
- BALLOTS FOR THE PROTESTEE
 - Including ballots with Identifying Marks
- BALLOTS FOR OTHER CANDIDATE/S

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- STRAY BALLOTS
- BALLOTS WITH VOTING MARKS

STRAY BALLOTS refer to ballots with two or more shades or without any shade in the contested position. MARKED BALLOTS refer to those ballots containing marks outside the ovals, which marks could either be "identifying marks" or "voting marks". "Voting marks" are markings placed beside the ovals that may appear to show the intent of the voter to vote for a party, while "identifying marks" are those intentionally placed to identify the ballot or the voter. Ballots containing "voting marks" may be subject to claims, while those with "identifying marks" to objections.

Thereafter, the REJECTED BALLOTS shall be physically counted.

(i) After segregating and counting the ballots, those classified as STRAY, MARKED or REJECTED will be given to the parties' revisors for viewing, objections and claims. All other ballots are not subject to objections or claims by the parties.

(j) There shall be a tally sheet for multi-slot positions of such number of copies depending on the number of the parties, that will be used for the tallying of the votes as they are counted, through the use of tara or sticks.

(k) Handwritten comments, objections and claims shall be submitted immediately after the recount of every clustered precinct and included in the recount report as well as those other documents in the ballot box that may be marked as exhibits for any of the party.

(l) In the event the Recount Committee determines that the integrity of the ballots has been violated or has not been preserved, or are wet and otherwise in such a condition that it cannot be recounted, the Chairman of the Committee shall request from the Election Records and Statistics Department (ERSD), the printing of the image of the ballots of the subject precinct stored in the CF card used in the May 10, 2010 elections in the presence of the parties. Printing of the ballot images shall proceed only upon prior authentication and certification by a duly authorized personnel of the Election Records and Statistics Department (ERSD) that the data or the images to be printed are genuine and not substitutes.

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(m) Appreciating the validity of the votes credited for any party shall be done by the Commission making use of but not limited to the ballot images stored in the original Compact Flash Cards used in the May 10, 2010 Automated National and Local Elections, and not by the Recount Committee. The rules on appreciation of ballots under Section 211 of the Omnibus Election Code shall apply suppletorily when appropriate.

Section 2. Section 7, Rule 15 of Resolution No. 8804 is hereby reinstated and amended to read as follows:

Section 7. Preparation and submission of recount report. – The members of the Recount Committee shall accomplish a report on the result of their recount in every pilot clustered precinct, the ballot box contents of which underwent their examinations, in an official form which shall be made available prior to the recount and shall contain the following information:

- a. The precinct number;
- b. The date, place and time of recount;
- c. The condition and serial numbers of the following:
 - c.1. Ballot boxes;
 - c.2. Locks;
 - c.3. Data storage device
- d. The votes of the parties per physical count of the paper ballots;
- e. The votes of the parties per ballot box copy of the election returns;
- f. The number of ballots questioned by the parties indicating therein the exhibit numbers;
- g. The number of torn, unused and stray ballots;
- h. The entries in the Minutes of Voting and Counting, particularly:
 - h.1. The number of registered voters;
 - h.2. The number of voters who actually voted;
 - h.3. The number of official ballots together with their serial numbers used in the election;
 - h.4. The number of ballots actually used indicating the serial numbers of the ballots; and
 - h.5. The unused ballots together with their serial numbers.

In accomplishing the Recount Report, writings should be legible and all data should be completely filled up by the Recount Committee. The per-precinct recount report shall also be submitted to the Commission on Elections.

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and certified to by the Chairman of the Recount Committee and the representatives of the parties. The duly accomplished handwritten Revision Report shall form part of the records of the case and shall be considered as the original Commission's copy, which the parties may photocopy at their expense. The tally sheet used for the recount, in case of multi-slot positions, shall be attached to the report.

In addition to the per-precinct recount report, the Recount Committee shall prepare and submit to the Division concerned within three (3) days from the termination of the recount of the pilot precincts for post-recount determination of merit of the protest case, a committee report summarizing the data, votes, questions on the ballots, significant observations made in the recount of ballots in the designated pilot clustered precincts, and handwritten comments and objections of parties. The same procedure shall apply should the Division concerned decide to continue the recount in the remaining contested clustered precincts.

Each party furnished with a copy of the committee report may submit their comments thereon within a non-extendible period of three (3) days from notice.

Section 3. Section 3, Rule 15 of Resolution No. 8804 and all other rules pertaining to the compensation and distribution of honoraria of the Recount Committees are hereby set aside until the Commission comes out with a resolution appertaining thereto.

Section 4. Rule 17 of Resolution No. 8804 is hereby renumbered and amended to read as follows:

RULE 16

Photocopying of Ballots/Printing of Ballot Images/ Augmentation of Cash Deposit

Section 1. **Photocopying simultaneous with recount.** -
On motion of a party, the Commission may allow the photocopying or reproduction of the ballots claimed and/or objected by the parties, minutes of voting, election returns and audit logs. The photocopying or reproduction, if allowed, must start at the commencement of recount and, as far as practicable, must be completed simultaneously with the termination of recount.

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Administrative Officer III (RO II)

Section 2.- Where conducted. - Photocopying of ballots and other documents, and the printing of ballot images shall be done within the premises of the Commission, or at or near the area where the recount is conducted, and shall be under the supervision of the Over-all Chairman of the Recount Committee or his duly authorized representative. The party concerned shall provide an efficient photocopying unit and shall bear all the expenses relative thereto.

Section 3.- Printing of Ballot Images. - In case the parties deem it necessary, they may file a motion to be approved by the Division of the Commission requesting for the printing of ballot images in addition to those mentioned in the second paragraph of item (e). Parties concerned shall provide the necessary materials in the printing of images such as but not limited to copying papers, toners and printers. Parties may also secure, upon prior approval by the Division of the Commission, a soft copy of the ballot images contained in a secured/hashed disc on the condition that the ballot images be first printed, at the expense of the requesting party, and that the printed copies be signed by the parties' respective revisors or representatives and by an ERSD IT-capable representative and deposited with the Commission.

The Over-all chairman shall coordinate with the Director IV, Election Records and Statistics Department (ERSD), for the printing of images. Said director shall in turn designate a personnel who will be responsible in the printing of ballot images.

Section 4. - Augmentation of Cash Deposit. - The parties will be directed to augment their cash deposit for the payment of the electricity consumed in the photocopying and/or printing of images, for the use of the system anent the printing of ballot images or in case the expenses for the sealing and retrieval of ballot boxes are taken from the cash deposit. Parties requesting for the photocopying of ballots and printing of images shall be required to make a deposit before the commencement of the recount proceedings at such amount as may be ordered.

Section 5. Rules 18, 19, 20, 21, 22 and 23 of Resolution No. 8804 are hereby renumbered as Rules 17, 18, 19, 20, 21 and 22 respectively.

Section 6. Rule 24 of Resolution 8804 is hereby renumbered and amended to read as follows:

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RULE 23

Amendatory, Repealing and Effectivity Clause

Section 1. **Amendment Clause.** – The Commission may at any time amend any provision of these rules.

Section 2. **Repealing Clause.** – Resolution No. 9104 and all other rules and resolutions of the Commission or parts thereof that are inconsistent with any provision of these rules are hereby deemed repealed, amended or modified accordingly.

Section 3. **Effectivity.** – These Rules shall be published in two (2) newspaper of general circulation and shall take effect on the seventh (7th) day following its publication.

Section 4. **Dissemination.** - Let copies of these Rules on the Recount Proceedings be furnished to all parties of election protest cases pending before this Commission and their respective counsels, the Presidential Electoral Tribunal (PET), Senate Electoral Tribunal (SET), the House of Representative Electoral Tribunal (HRET), and the Regular Courts, through the Court Administrator.

Let the Education and Information Department caused the publication of this Resolution in two (2) newspapers of general circulation.

SO ORDERED.


SIXTO S. BRILLANTES JR.

Chairman


RENE V. SARMIENTO

Commissioner


ARMANDO C. VELASCO

Commissioner


LUCENITO N. TAGLE

Commissioner


ELIAS R. YUSOPH

Commissioner

Cc: Chairman
All Commissioners
Executive Director
Deputy Executive Director for Operations
Electoral Contests and Adjudication Department
Education and Information Department
Clerk of the Commission
All other Departments
Cye

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ANNEX "G"



Republic of the Philippines
Commission on Elections
Manila

IN THE MATTER OF AMENDING
RULES 2, 6, 8, 13 AND 15 OF
COMELEC RESOLUTION NO. 8804
AS AMENDED BY COMELEC
RESOLUTION NO. 9164

BRILLANTES, SIXTO S. JR.
TAGLE, LUCENITO N.
YUSOPH, ELIAS R.
LIM, CHRISTIAN ROBERT S.
PADACA, MA. GRACIA CIELO M.
PARREÑO, AL A.
GUIA, LUIE TITO L.

Chairman
Commissioner
Commissioner
Commissioner
Commissioner
Commissioner
Commissioner

June 20, 2013

X-----X

Promulgated on:

RESOLUTION NO. 9720

WHEREAS, it is the duty of the Commission on Elections to ensure the credibility of the election results, in order that it may faithfully reflect the true will of the electorate;

WHEREAS, the Constitution further mandates that this Commission provide procedural rules that will afford litigants in an Automated Election System (AES) an accessible, inexpensive and speedy remedy;

WHEREAS, in order to achieve the above mentioned constitutional mandate, there is a need to amend Resolution No. 8804 promulgated on March 22, 2010 as amended by Resolution No. 9164 promulgated on March 16, 2011;

NOW, THEREFORE, in view of the foregoing, the Commission **RESOLVED**, as it hereby **RESOLVES**, to amend Rules 2, 6, 8, 13 and 15 of Comelec Resolution No. 8804 as amended by Comelec Resolution No. 9164, as follows:

SECTION 1. Section 1, Rule 2 is hereby amended to read as follows:

**"Rule 2
Definition of Terms**

Section 1. Meaning of Words. -Whenever used in these Rules, the following words or terms shall mean:

XXX

XXX

XXX

c) **Precinct** shall refer to the unit or territory for the purpose of voting. For purposes of AES, it pertains to clustered precincts;

XXX

XXX

XXX"

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SECTION 2. Section 3, Rule 6 is hereby amended to read as follows:

**“Rule 6
Election Protest**

Section 3. *How Initiated.*— An election protest or petition for quo warranto shall be filed directly with the Commission within a non-extendible period of ten (10) days following the date of proclamation. The protest or petition shall be in two (2) original copies with annexes together with an electronic version thereof stored in compact disc, flash drive, or other portable storage device, with proof of service of a copy upon the protestee. The electronic version of the protest or petition need not be signed and shall be in MS Word or other similar formats, while the annexes shall be in PDF format saved collectively as a single file.

Each contest shall refer exclusively to one (1) office but contests for offices of the Sangguniang Pampook, Sangguniang Panlalawigan or Sangguniang Panglungsod may be consolidated in one (1) case.”

SECTION 3. Section 1, Rule 8 is hereby amended to read as follows:

**“Rule 8
Answer and Counter-Protest**

Section 1. *Verified Answer; Counter-protest.*— Within five (5) days from receipt of the summons, the protestee/s shall file an Answer in two (2) original copies with complete annexes together with an electronic version thereof stored in compact disc, flash drive or other portable storage device, with proof of service of a copy upon the protestant. The electronic version of the Answer need not be signed and shall be in MS Word format or other similar formats, while the annexes shall be in PDF format saved collectively as a single file.

The answer shall be verified and may set forth admissions and denials, special and affirmative defenses and a compulsory counterclaim. The protestee may incorporate a counter-protest in the answer.

The counter-protest shall specify the counter-protested precincts and any votes of the parties therein per the Statement of Votes, or if not so specified, an explanation why the votes are not specified, and a detailed specification of the acts or omissions complained of showing the electoral frauds, anomalies or irregularities in the counter-protested precincts.”

SECTION 4. Sections 1, 4 and 5, Rule 13 are hereby amended to read as follows:

**“Rule 13
Preliminary Conference**

Section 1. *Preliminary Conference; Mandatory.*— Within three (3) days after the filing of the last responsive pleading allowed by these rules, or expiration of the same period without any responsive pleading

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having been filed, the Commission shall conduct a mandatory preliminary conference among the parties to consider:

- a) The simplification of issues;
- b) The necessity or desirability of amendments to the pleadings;
- c) The possibility of obtaining stipulations or admission of facts and of documents to avoid unnecessary proof;
- d) The identification of the pilot protested and counter-protested precincts and the manifestation of the preferred mode of recount, unless the protestant or protestee opts **ONLY** for the reading/appreciation of rejected ballots in all protested or counter-protested precincts;
- e) The limitation of the number of witnesses;
- f) The nature of the testimonies of the witnesses and whether they relate to evidence *aliunde*, the ballots or otherwise;
- g) The withdrawal of certain protested or counter-protested precinct (especially those where the ballot boxes or ballots are unavailable or missing and cannot be located or destroyed due to natural disasters or calamities);
- h) The number of recount committees to be constituted;
- i) The procedure to be followed in case the election protest or counter-protest seeks, wholly or partially, the examination, verification or re-tabulation of election returns; and
- j) Such other matters as may aid in the prompt disposition of the case.

Section 4. Preliminary Conference Brief.— The parties shall file with the Commission and serve on the adverse party, in such manner as shall ensure their receipt at least one (1) day before the date of the preliminary conference, their respective briefs which shall contain the following:

- a) A summary of admitted facts and proposed stipulation of facts;
- b) The issues to be tried or resolved;
- c) The pre-marked documents or exhibits to be presented, stating their purpose;
- d) A manifestation of their having availed or their intention to avail themselves of discovery procedures or referral to commissioners;
- e) The list of pilot protested or counter-protested precincts, which shall be not more than twenty percent (20%) of the total number of precincts, but in no case exceeding two hundred (200) or be less than twenty (20) precincts.

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best illustrate the merits of the protest which shall be the subject to the initial recount of paper ballots, reading/appreciation of the rejected ballots and decryption and recount of the ballot images, if applicable.

The protestant may, however, waive the recount of the paper ballots and instead resort to either the decryption and recount of the ballot images and reading/appreciation of the rejected ballots of the pilot protested or counter-protested precincts, OR the reading/appreciation of the rejected ballots only of the entire protested or counter-protested precincts;

- f) The number and names of the witnesses, their addresses, and the substance of their respective testimonies. The testimonies of the witnesses shall be by affidavits in question and answer form as their direct testimonies, subject to oral cross examination;
- g) A manifestation of withdrawal of certain protested or counter-protested precincts, if such is the case;
- h) The proposed number of recount committees and names of their representative, and their alternates; and
- i) In case the election protest or counter-protest seeks the examination, verification or re-tabulation of election returns, the procedure to be followed.

Section 5. Failure to File Brief.— Failure to file the brief or to allege the required contents mentioned in the preceding section shall have the same effect as failure to appear at the preliminary conference.”

SECTION 5. Sections 3 and 6, Rule 15 are hereby amended to read as follows:

**“Rule 15
Recount of Ballots**

Section 3. Compensation of the Members of the Recount Committee. - The Commission shall fix the compensation of the members of the Committee including the fees for supplies and materials, storage of election paraphernalia, honoraria of warehouse ballot box custodian, photocopying watchers and security details at *Three Thousand Pesos (P3,000.00)* per precinct and shall be distributed as follows:

a. Chairman	P1, 000.00
b. Recorder	P500.00
c. Recount Ballot Box Custodian	P480.00
d. Supplies/Materials	P400.00
e. Storage	P85.00

The over-all Supervisor shall also receive an honorarium of P100 for every ballot box opened and recounted, but in no case shall he receive less than the highest honorarium that maybe received by any of the committee chairmen. Warehouse ballot box custodians, photocopying watchers and security details shall also receive an honorarium of P100 each.

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allotted an honorarium of ₱50 for every ballot box they will handle, which amount shall be shared among all of them.

A portion of the said cash deposit shall be allotted and set aside for the honoraria of the following support staff for each ballot box as follows:

- | | |
|-------------------------------|-------------------|
| a. ECAD Security Personnel | 4 x ₱35 = ₱140.00 |
| b. COMELEC Drivers | 2 x ₱35 = ₱70.00 |
| c. Organic Security Personnel | 2 x ₱35 = ₱70.00 |
| d. PNP Personnel | 2 x ₱35 = ₱70.00 |
| e. Xerox Machine Watchers | 1 x ₱35 = ₱35.00 |

The cost of decryption of the ballot images shall be *Five Hundred Pesos* (₱500.00) per compact flash (CF) card. Said amount shall be allocated as follows: *One Hundred Pesos* (₱100.00) for electricity; *Fifty Pesos* (₱50.00) for the use computers and printers; and *Three Hundred Fifty Pesos* (₱350.00) for the honoraria of the Election Records and Statistics Department (ERSD) representative/s.

All consumables for the decryption, generation and printing of ballot images, such as toner and coupon bonds shall be provided by the parties.

Section 6. Conduct of the Recount. – The recount of the votes on the ballots shall be done manually and visually and according to the procedures hereunder:

- (a) At the preliminary conference, the date, place, the mode of the recount of votes on the ballots from each of the protested precincts and the number of the recount committees shall be set.
- (b) The recount of the ballots in the remaining contested precincts shall not commence until the Division concerned shall have made a determination on the merit of the protest based on the results of the recount of the votes on the ballots from the pilot protested precincts and the review of other documentary exhibits which the protestant may submit. The documentary exhibits may be submitted by the protestant within a non-extendible period of ten (10) days from the completion of the recount of the pilot protested precincts.

Based on the above determination, the Division may dismiss the protest, without further proceedings, if no reasonable recovery could be established from the pilot protested precincts. Otherwise, the recount of the ballots in the remaining protested precincts shall proceed. The recount of the pilot counter-protested precincts, if any, and of the remaining counter-protested precincts if substantial recovery is likewise established by the counter protestant, shall then follow. For this purpose, there is substantial recovery when the protestant or counter protestant is able to recover at least 20% of the overall vote lead of the protestee or counter-protestee.

However, the above-mentioned procedure shall not be applicable in case the protestant avails the option of

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reading/appreciation of the rejected ballots only pertaining to the entire protested or counter-protested precincts under Section 4(e) of Rule 13.

XXX

XXX

XXX

- (I) In the event the protestant waives the recount of the paper ballots and resorts to the decryption and recount of the ballot images and reading/appreciation of the rejected ballots under Section 4(e) of Rule 13, or whenever the Division concerned determines that the integrity of the ballots has been violated or has not been preserved, or are wet and otherwise in such a condition that it cannot be recounted, the Clerk of the Division concerned shall request from the Election Records and Statistics Department (ERSD), the printing of the images of the ballots of the subject precinct stored in the CF card used in the May 13, 2013 elections in the presence of the parties. Printing of the ballot images shall proceed only upon prior authentication and certification by a duly authorized personnel of the Election Records and Statistics Department (ERSD) that the data or the images to be printed are genuine and are not tampered.

XXX

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XXX"

These amendments shall take effect within seven (7) days from publication in two (2) newspapers of general circulation.

The Clerk of the Commission is likewise directed to incorporate all amendments introduced by Comelec Resolution Nos. 9104, 9164 and herein Resolution, to Comelec Resolution No. 8804 otherwise known as "The Comelec Rules of Procedure on Disputes in an Automated Elections" and publish the same to the COMELEC website for the information of the general public.


Let the Education and Information Department (EID), Clerk of the Commission and the Election Contests Adjudication Department (ECAD) implement this Resolution.

SO ORDERED.


SIXTO S. BRILLANTES, JR.
Chairman


LUCENITO N. TAGLE
Commissioner


ELIAS R. YUSOPH
Commissioner


ON OFFICIAL BUSINESS
CHRISTIAN ROBERT S. LIM
Commissioner


MARIA GRACIA CIELO M. PADACA
Commissioner

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Administrative Officer III (RO II)
6

IN THE MATTER OF AMENDING RULES 2, 6, 8, 13 AND 15 OF COMELEC RESOLUTION NO. 8804 AS
AMENDED BY COMELEC RESOLUTION NO. 9164



AL A. PARRENO
Commissioner

Cc: Chairman
All Commissioners
Executive Director
Deputy Executive Director for Operations
Electoral Contests and Adjudication Department
Education and Information Department
Clerk of the Commission
All other Departments


LUIE TITO F. GUIA
Commissioner

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MEDEL C. DE ASIS
Administrative Officer III (RO II)

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Administrative Officer III (RO II)

ANNEX "G"



Republic of the Philippines
Commission on Elections
Manila

IN THE MATTER OF AMENDING
RULES 2, 6, 8, 13 AND 15 OF
COMELEC RESOLUTION NO. 8804
AS AMENDED BY COMELEC
RESOLUTION NO. 9164

BRILLANTES, SIXTO S. JR.
TAGLE, LUCENITO N.
YUSOPH, ELIAS R.
LIM, CHRISTIAN ROBERT S.
PADACA, MA. GRACIA CIELO M.
PARREÑO, AL A.
GUIA, LUIE TITO L.

Chairman
Commissioner
Commissioner
Commissioner
Commissioner
Commissioner
Commissioner

June 20, 2013

X-----X

Promulgated on:

RESOLUTION NO. 9720

WHEREAS, it is the duty of the Commission on Elections to ensure the credibility of the election results, in order that it may faithfully reflect the true will of the electorate;

WHEREAS, the Constitution further mandates that this Commission provide procedural rules that will afford litigants in an Automated Election System (AES) an accessible, inexpensive and speedy remedy;

WHEREAS, in order to achieve the above mentioned constitutional mandate, there is a need to amend Resolution No. 8804 promulgated on March 22, 2010 as amended by Resolution No. 9164 promulgated on March 16, 2011;

NOW, THEREFORE, in view of the foregoing, the Commission **RESOLVED**, as it hereby **RESOLVES**, to amend Rules 2, 6, 8, 13 and 15 of Comelec Resolution No. 8804 as amended by Comelec Resolution No. 9164, as follows:

SECTION 1. Section 1, Rule 2 is hereby amended to read as follows:

**"Rule 2
Definition of Terms**

Section 1. Meaning of Words. --Whenever used in these Rules, the following words or terms shall mean:

XXX

XXX

XXX

c) **Precinct** shall refer to the unit or territory for the purpose of voting. For purposes of AES, it pertains to clustered precincts;

XXX

XXX

XXX"

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SECTION 2. Section 3, Rule 6 is hereby amended to read as follows:

**“Rule 6
Election Protest**

Section 3. *How Initiated.*— An election protest or petition for quo warranto shall be filed directly with the Commission within a non-extendible period of ten (10) days following the date of proclamation. The protest or petition shall be in two (2) original copies with annexes together with an electronic version thereof stored in compact disc, flash drive, or other portable storage device, with proof of service of a copy upon the protestee. The electronic version of the protest or petition need not be signed and shall be in MS Word or other similar formats, while the annexes shall be in PDF format saved collectively as a single file.

Each contest shall refer exclusively to one (1) office but contests for offices of the Sangguniang Pampook, Sangguniang Panlalawigan or Sangguniang Panglungsod may be consolidated in one (1) case.”

SECTION 3. Section 1, Rule 8 is hereby amended to read as follows:

**“Rule 8
Answer and Counter-Protest**

Section 1. *Verified Answer; Counter-protest.*— Within five (5) days from receipt of the summons, the protestee/s shall file an Answer in two (2) original copies with complete annexes together with an electronic version thereof stored in compact disc, flash drive or other portable storage device, with proof of service of a copy upon the protestant. The electronic version of the Answer need not be signed and shall be in MS Word format or other similar formats, while the annexes shall be in PDF format saved collectively as a single file.

The answer shall be verified and may set forth admissions and denials, special and affirmative defenses and a compulsory counterclaim. The protestee may incorporate a counter-protest in the answer.

The counter-protest shall specify the counter-protested precincts and any votes of the parties therein per the Statement of Votes, or if not so specified, an explanation why the votes are not specified, and a detailed specification of the acts or omissions complained of showing the electoral frauds, anomalies or irregularities in the counter-protested precincts.”

SECTION 4. Sections 1, 4 and 5, Rule 13 are hereby amended to read as follows:

**“Rule 13
Preliminary Conference**

Section 1. *Preliminary Conference; Mandatory.*— Within three (3) days after the filing of the last responsive pleading allowed by these rules, or expiration of the same period without any responsive pleading, the parties shall appear for a preliminary conference.

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having been filed, the Commission shall conduct a mandatory preliminary conference among the parties to consider:

- a) The simplification of issues;
- b) The necessity or desirability of amendments to the pleadings;
- c) The possibility of obtaining stipulations or admission of facts and of documents to avoid unnecessary proof;
- d) The identification of the pilot protested and counter-protested precincts and the manifestation of the preferred mode of recount, unless the protestant or protestee opts **ONLY** for the reading/appreciation of rejected ballots in all protested or counter-protested precincts;
- e) The limitation of the number of witnesses;
- f) The nature of the testimonies of the witnesses and whether they relate to evidence *aliunde*, the ballots or otherwise;
- g) The withdrawal of certain protested or counter-protested precinct (especially those where the ballot boxes or ballots are unavailable or missing and cannot be located or destroyed due to natural disasters or calamities);
- h) The number of recount committees to be constituted;
- i) The procedure to be followed in case the election protest or counter-protest seeks, wholly or partially, the examination, verification or re-tabulation of election returns; and
- j) Such other matters as may aid in the prompt disposition of the case.

Section 4. Preliminary Conference Brief.— The parties shall file with the Commission and serve on the adverse party, in such manner as shall ensure their receipt at least one (1) day before the date of the preliminary conference, their respective briefs which shall contain the following:

- a) A summary of admitted facts and proposed stipulation of facts;
- b) The issues to be tried or resolved;
- c) The pre-marked documents or exhibits to be presented, stating their purpose;
- d) A manifestation of their having availed or their intention to avail themselves of discovery procedures or referral to commissioners;
- e) The list of pilot protested or counter-protested precincts, which shall be not more than twenty percent (20%) of the total number of precincts, but in no case exceeding two hundred (200) or be less than twenty (20) precincts.

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best illustrate the merits of the protest which shall be the subject to the initial recount of paper ballots, reading/appreciation of the rejected ballots and decryption and recount of the ballot images, if applicable.

The protestant may, however, waive the recount of the paper ballots and instead resort to either the decryption and recount of the ballot images and reading/appreciation of the rejected ballots of the pilot protested or counter-protested precincts, OR the reading/appreciation of the rejected ballots only of the entire protested or counter-protested precincts;

- f) The number and names of the witnesses, their addresses, and the substance of their respective testimonies. The testimonies of the witnesses shall be by affidavits in question and answer form as their direct testimonies, subject to oral cross examination;
- g) A manifestation of withdrawal of certain protested or counter-protested precincts, if such is the case;
- h) The proposed number of recount committees and names of their representative, and their alternates; and
- i) In case the election protest or counter-protest seeks the examination, verification or re-tabulation of election returns, the procedure to be followed.

Section 5.Failure to File Brief.— Failure to file the brief or to allege the required contents mentioned in the preceding section shall have the same effect as failure to appear at the preliminary conference.”

SECTION 5.Sections 3 and 6, Rule 15 are hereby amended to read as follows:

**“Rule 15
Recount of Ballots**

Section 3.Compensation of the Members of the Recount Committee. - The Commission shall fix the compensation of the members of the Committee including the fees for supplies and materials, storage of election paraphernalia, honoraria of warehouse ballot box custodian, photocopying watchers and security details at *Three Thousand Pesos (P3,000.00)* per precinct and shall be distributed as follows:

- | | |
|---------------------------------|------------|
| a. Chairman | P1, 000.00 |
| b. Recorder | P500.00 |
| c. Recount Ballot Box Custodian | P480.00 |
| d. Supplies/Materials | P400.00 |
| e. Storage | P85.00 |

The over-all Supervisor shall also receive an honorarium of P100 for every ballot box opened and recounted, but in no case shall he receive less than the highest honorarium that maybe received by any of the committee chairmen. Warehouse ballot box custodians shall also receive P100 for every ballot box opened and recounted, but in no case shall he receive less than the highest honorarium that maybe received by any of the committee chairmen.

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allotted an honorarium of ₱50 for every ballot box they will handle, which amount shall be shared among all of them.

A portion of the said cash deposit shall be allotted and set aside for the honoraria of the following support staff for each ballot box as follows:

- | | |
|-------------------------------|-------------------|
| a. ECAD Security Personnel | 4 x ₱35 = ₱140.00 |
| b. COMELEC Drivers | 2 x ₱35 = ₱70.00 |
| c. Organic Security Personnel | 2 x ₱35 = ₱70.00 |
| d. PNP Personnel | 2 x ₱35 = ₱70.00 |
| e. Xerox Machine Watchers | 1 x ₱35 = ₱35.00 |

The cost of decryption of the ballot images shall be *Five Hundred Pesos* (₱500.00) per compact flash (CF) card. Said amount shall be allocated as follows: *One Hundred Pesos* (₱100.00) for electricity; *Fifty Pesos* (₱50.00) for the use computers and printers; and *Three Hundred Fifty Pesos* (₱350.00) for the honoraria of the Election Records and Statistics Department (ERSD) representative/s.

All consumables for the decryption, generation and printing of ballot images, such as toner and coupon bonds shall be provided by the parties.

Section 6. Conduct of the Recount. – The recount of the votes on the ballots shall be done manually and visually and according to the procedures hereunder:

- (a) At the preliminary conference, the date, place, the mode of the recount of votes on the ballots from each of the protested precincts and the number of the recount committees shall be set.
- (b) The recount of the ballots in the remaining contested precincts shall not commence until the Division concerned shall have made a determination on the merit of the protest based on the results of the recount of the votes on the ballots from the pilot protested precincts and the review of other documentary exhibits which the protestant may submit. The documentary exhibits may be submitted by the protestant within a non-extendible period of ten (10) days from the completion of the recount of the pilot protested precincts.

Based on the above determination, the Division may dismiss the protest, without further proceedings, if no reasonable recovery could be established from the pilot protested precincts. Otherwise, the recount of the ballots in the remaining protested precincts shall proceed. The recount of the pilot counter-protested precincts, if any, and of the remaining counter-protested precincts if substantial recovery is likewise established by the counter protestant, shall then follow. For this purpose, there is substantial recovery when the protestant or counter protestant is able to recover at least 20% of the overall vote lead of the protestee or counter-protestee.

However, the above-mentioned procedure shall not be applicable in case the protestant avails the option of

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reading/appreciation of the rejected ballots only pertaining to
the entire protested or counter-protested precincts under
Section 4(e) of Rule 13.

xxx

xxx

xxx

- (l) In the event the protestant waives the recount of the paper ballots and resorts to the decryption and recount of the ballot images and reading/appreciation of the rejected ballots under Section 4(e) of Rule 13, or whenever the Division concerned determines that the integrity of the ballots has been violated or has not been preserved, or are wet and otherwise in such a condition that it cannot be recounted, the Clerk of the Division concerned shall request from the Election Records and Statistics Department (ERSD), the printing of the images of the ballots of the subject precinct stored in the CF card used in the May 13, 2013 elections in the presence of the parties. Printing of the ballot images shall proceed only upon prior authentication and certification by a duly authorized personnel of the Election Records and Statistics Department (ERSD) that the data or the images to be printed are genuine and are not tampered.

xxx

xxx

xxx”

These amendments shall take effect within seven (7) days from publication in two (2) newspapers of general circulation.

The Clerk of the Commission is likewise directed to incorporate all amendments introduced by Comelec Resolution Nos. 9104, 9164 and herein Resolution, to Comelec Resolution No. 8804 otherwise known as “The Comelec Rules of Procedure on Disputes in an Automated Elections” and publish the same to the COMELEC website for the information of the general public.


Let the Education and Information Department (EID), Clerk of the Commission and the Election Contests Adjudication Department (ECAD) implement this Resolution.

SO ORDERED.


SIXTO S. BRILLANTES, JR.
Chairman


LUCENITO N. TAGLE
Commissioner


ELIAS R. YUSOPH
Commissioner


ON OFFICIAL BUSINESS
CHRISTIAN ROBERT S. LIM
Commissioner


MARIA GRACIA CIELO M. PADACA
Commissioner

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IN THE MATTER OF AMENDING RULES 2, 6, 8, 13 AND 15 OF COMELEC RESOLUTION NO. 8804 AS
AMENDED BY COMELEC RESOLUTION NO. 9164

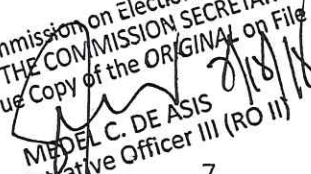

AL A. PARRENO
Commissioner

Cc: Chairman
All Commissioners
Executive Director
Deputy Executive Director for Operations
Electoral Contests and Adjudication Department
Education and Information Department
Clerk of the Commission
All other Departments


LUIE TITO F. GUIA
Commissioner

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ANNEX "H"

Republic of the Philippines
Commission on Elections
Manila

**GENERAL INSTRUCTIONS ON THE
CONDUCT OF COUNTING AND
CANVASSING OF BALLOTS OF
DETAINEE VOTERS WITH VOTES
CAST IN FAVOR OF LOCAL
CANDIDATES IN CONNECTION
WITH THE MAY 9, 2016 NATIONAL
AND LOCAL ELECTIONS.**

BAUTISTA, J. Andres D.,
LIM, Christian Robert S.,
PARREÑO, AI A.,
GUIA, Luie Tito F.,
LIM, Arthur D.,
GUANZON, Ma. Rowena Amelia V.,
ABAS, Sheriff M.,

Chairman
Commissioner
Commissioner
Commissioner
Commissioner
Commissioner

Promulgated: May 3, 2016

RESOLUTION NO. 10113

WHEREAS, on March 6, 2012, the Commission on Elections promulgated COMELEC Resolution No. 9371 to serve as the rules and regulations on detainee registration and voting for the May 13, 2013 National and Local Elections and subsequent elections thereafter;

WHEREAS, the Supreme Court, on April 19, 2016, in the case of *Aguinaldo v. New Bilibid Prison (Bureau of Corrections) et. al.*, G.R. No. 221201, issued a Temporary Restraining Order (TRO) enjoining the Commission on Elections, among others, from applying the following provisions of COMELEC Resolution No. 9371 on the local level: (i) Rule 1, Section 1; (ii) Rule 1, Section 2(a) and (c); (iii) Rule 3, Section 1; and (iv) Rule 7, Section 1;

WHEREAS, the TRO is not applicable to the May 9, 2016 National and Local Elections **on the national level**; thus, detainees are still allowed to vote but only for candidates on the national level if they so choose;

WHEREAS, the Commission on Elections has directed in the General Instruction to the Board of Elections Inspectors (BEI) that ballots of detainee voters containing votes for local candidates will be elevated to the Commissions Main Office in Manila for counting, and eventually, canvassing, thus, necessitating rules on counting and canvassing for the purpose;

NOW, THEREFORE, pursuant to the powers vested in it by the Constitution, the Omnibus Election Code, Resolution No. 9371 and other pertinent election laws, the Commission on Elections has **RESOLVED**, as it hereby **RESOLVES**, to promulgate the following general instructions rules and regulations on the conduct of counting and canvassing of ballots of detainee voters with votes cast in favor of local candidates in connection with the May 9, 2016 National and Local Elections

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RULE I COUNTING AND CANVASSING

SECTION 1. Special Boards of Election Inspectors for Counting (SBEI-C). – The Committee on Detainee Voting (CoDV) may constitute as many SBEI-Cs for detainee voting as may be deemed necessary, to count the ballots of detainee voters with votes cast in favour of local candidates. The members of the SBEI-C shall be appointed by the CoDV.

To determine the number of SBEI-Cs to be constituted, the CoDV shall use as basis the total number of detainees at a ratio of four hundred (400) ballots per SBEI-C. The order of numbering of SBEI-C shall be determined through a raffle. In case the CoDV constituted more SBEI-Cs than what is required, the SBEI-C last in the order of numbering may be deactivated.

For every twenty (20) SBEI-Cs, if applicable, the Chairman of the CoDV shall designate one (1) supervisor who shall supervise the counting, tabulation, preparation of Election Returns (ER) and other documents.

SECTION 2. Oath of Members of SBEI-C. – Before assuming their office, the chairperson and members of the SBEI-C shall take and sign an Oath (**CEF No. A5 & A5-A**) before any officer authorized to administer oaths. Copies of the oath shall immediately be submitted to the CoDV.

SECTION 3. Notice of Counting. – The CoDV shall give notice to all presidential, vice-presidential, senatorial candidates and party-list representatives, duly registered political parties or coalition of political parties which has nominated national candidates, sectors and organizations participating under the party list system, and accredited citizen's arm of the date, time and place of counting, not later than May 4, 2016.

SECTION 4. Proceedings of the SBEI-C. – The SBEI-C shall meet at the place designated by the CoDV at **1:00 o'clock in the afternoon of May 11, 2016** to count the votes cast by the detainee voters and shall not adjourn until the counting is completed. All proceedings of the SBEI-C shall be done in public. It shall act through its chairperson and all questions presented before it shall be decided without delay by a majority vote of the members. During its meetings, not more than one (1) member shall be absent at the same time, and in no case shall such absence be for more than twenty (20) minutes.

SECTION 5. Counting of votes to be public and without interruption. – The SBEI-C shall publicly count the votes cast and ascertain the results.

They shall not adjourn or postpone or delay the count until it has been fully completed or ordered otherwise by the Commission.

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Administrative Officer III (RO II)
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Any violation of this Section, or its pertinent portion, shall constitute an election offense and shall be penalized in accordance with BP Blg. 881, as amended.

SECTION 6. Preliminaries to the counting of votes. - The following activities shall be undertaken by the SBEI-Cs before counting the ballots cast:

- (a) Unpack or remove the seal of the envelopes and take out all the ballots.
- (b) Examine the ballots to determine whether there are torn/unused ballots. Torn/unused ballots shall not be read during the counting of votes. The envelope containing the excess and marked ballots shall be signed and sealed by the members of the SBEI-C and shall be turned over to the CoDV's Reception and Custody Group.
- (c) Pile all valid ballots in bundles of four hundred (400) each.

SECTION 7. Appreciation of ballots. - In the appreciation of ballots, every ballot shall be presumed valid unless there is clear and good reason to justify its rejection. All entries in the ballot shall be presumed to have been filled-out by the voter unless there is clear and good reason to consider it otherwise.

Any question on the appreciation of ballots shall be decided by a majority of the members of the SBEI-C. A vote of two (2) members shall be considered the majority.

No watcher, candidate, or any other person inside the polling place shall be allowed to participate in the appreciation of ballots, except that any watcher may file a protest which shall be recorded in the Minutes.

The SBEI-C shall only appreciate and count the votes for national positions. These positions are limited to the following:

- (1) President;
- (2) Vice-President;
- (3) Senators; and
- (4) Party-List

The SBEI-C shall observe the following rules for the appreciation of ballots bearing in mind that the objective of the election is to obtain the expression of the voter's will:

- a) The intent of the voters is expressed by fully shading the oval beside the name of the candidate. This is consistent with the instruction provided on the face of the ballot on how to vote;
- b) If the candidates voted for exceed the number of those to be elected, the ballot is valid, but the votes shall not be counted for any of the candidates

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for such position. This shall not, however, affect the validity of the votes in other positions;

- c) Marks encircling the ovals, showing that it is the intention of the voter to vote for the candidate corresponding to the oval shall be considered valid;
- d) Marks such as checks, crosses, etc., if such would clearly indicate that voter voted in that manner shall not invalidate the vote cast;
- e) Unnecessary marks outside of the oval such as but not limited to lines, circles, crossing-out of the names of the candidate, etc. that would give the impression that such were made in order to identify the ballot shall invalidate the ballot;
- f) When the oval beside the name of the candidate is not fully shaded, the SBEI-C shall consider the following points in appreciating the ballots:
 - i. Hesitation marks shall not be counted as a valid vote. This refers to a mark in the ballot where the shade of the oval fails to meet at least 20% of the area of the oval, which includes a point or other marks, and is unique for a particular oval. In determining hesitation marks, the SBEI-C shall consider the manner of shading of the voter in other positions. In case of doubt, the SBEI-C shall put the matter on a vote.
 - ii. Improper marks on the oval using a cross, line, circles, check or other marks apart from simply shading the entirety of the oval shall be considered as an expression of the will of the voter and shall be considered as a vote as long as the oval is sufficiently shaded.
- g) In case the voter marked an oval and then subsequently crossed-out such oval or used other marks on the oval to show desistance from voting the candidate, it shall be considered as a valid withdrawal of the vote;
- h) Unless it should clearly appear that they have been deliberately put by the voter to serve as identification marks, marks outside of the oval shall not invalidate the ballot.

SECTION 8. Manner of counting of detainee ballots. – The SBEI-C shall proceed with the counting as follows:

- a.) The Chairperson, the Poll Clerk and the Third Member shall position themselves in such a way as to give the watchers and the public an unimpeded view of the ballot being read by the Chairperson, as well as of the election returns and tally board being simultaneously accomplished by the Poll Clerk and the Third Member, respectively;
- b.) The watchers and the public shall not touch any of the said election documents. The table shall be cleared of all unnecessary writing paraphernalia. Any violation hereof shall constitute an election offense;

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Administrative Officer III (PO II)
7/18/18

- c.) The Chairperson of the SBEI-C shall take the ballots of the first pile one by one and determine whether there is an OVERVOTE in any of the positions voted for.

If there is none, the Chairperson of the SBEI-C shall proceed with the reading of the names of the candidates voted for and the offices for which they were voted, as well as the name of the party, organization or coalition voted for under the party-list system, in the order in which they appear thereon.

If there is an OVERVOTE for a certain position/s, the same shall not be counted but shall not invalidate the ballot and the votes for the other positions.

- d.) The Poll Clerk and the Third Member shall record simultaneously in the election returns and in the tally board, respectively, each vote as it is read. Each vote shall be recorded by a vertical line, except every fifth vote which shall be recorded by a diagonal line crossing the previous four vertical lines;
- e.) The same procedure shall be followed with the succeeding piles of ballots, if any; and
- f.) The sub-total of votes in figures obtained by each candidate and party list candidate shall be recorded in the election returns and tally board after one hundred (100) ballots are read.

After all the ballots have been read:

- a.) Record, in words and in figures, the total number of votes obtained by each candidate and by each party, organization or coalition participating under the party-list system, both in the election returns and in the tally board;
- b.) Ensure that the entries on the first copy of the election returns are clearly impressed on the other copies; and
- c.) Close the entries by affixing their initials immediately after the last vote recorded or immediately after the name of the candidate and party-list candidates who did not receive any vote;
- d.) The Poll Clerk and the Third Member shall record in the election returns and in the tally board, respectively, the total number of votes obtained by each candidate and party-list candidate, in words and figures;

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- e.) Accomplish the certification portion of the election returns and tally board;
- f.) Require the watchers, if any, to affix their signatures and imprint their thumb marks on the right hand portion of the election returns and the tally board;
- g.) Deposit the tally board in the envelope provided for that purpose. The tally board, as accomplished and certified by the SBEI-C, shall not be changed or destroyed.

The proceedings of the SBEI-C shall be recorded in the Minutes of Counting of Votes (CEF No. A11) to be accomplished in two (2) copies which shall be placed in separate sealed envelopes to be distributed as follows:

- a. The first copy, to the Election Records and Statistics Department (ERSD), this Commission; and
- b. The second copy, to the CoDV.

SECTION 9. Post-counting procedures. – Upon termination of the counting of votes, the members of the SBEI-C shall:

- a. Place the counted official ballots in the envelope for counted ballots;
- b. Seal the envelope with paper seal and affix their signatures on the said paper seal;
- c. Deliver the envelope properly sealed and the eighth copy of the election returns to the CoDV's Reception and Custody Group for custody and safekeeping; and
- d. Distribute the election returns in accordance with Section 40 hereof.

SECTION 10. Election Returns. – The election returns shall be prepared in eight (8) copies to be distributed as follows:

- a. The first copy, to be delivered to the Detainee Board of Canvassers;
- b. The second copy, to the Congress directed to the President of the Senate;
- c. The third copy, to the Commission through the Election Records and Statistics Department (ERSD);

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Administrative Services III (RO II)
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- d. The fourth copy, to the dominant majority party as determined by the Commission;
- e. The fifth copy, to the dominant minority party as determined by the Commission;
- f. The sixth copy, to the accredited citizen's arm;
- g. The seventh copy, to be posted on a wall within the premises of the counting center;
- h. The eighth copy, to CoDV's Reception and Custody Group.

The copy of the election returns posted on the wall shall be open for public viewing at any time of the day for forty-eight (48) hours following its posting. Within the said period of time, any person may view or capture an image of the election returns.

After the prescribed period for posting, the Chairpersons of the SBEI-C shall collect the posted election returns and keep the same in their custody to be produced for image or data capturing as may be requested by any voter or for any lawful purpose as may be ordered by competent authority.

SECTION 11. Honorarium of the SBEI-C. – The members of SBEI-C shall each receive honorarium of Three Thousand Pesos (Php 3,000.00) and transportation allowance amounting to Five Hundred Pesos (Php 500.00).

SECTION 12. Detainee Board of Canvassers (DBOC). – A Detainee Board of Canvassers (DBOC) shall be constituted to be composed of ranking lawyers of the Commission and whose appointment shall be issued by the Chairperson of the CoDV not later than May 4, 2016.

SECTION 13. Honorarium of the DBOC. – The members of DBOC shall receive honorarium of Ten Thousand Pesos (Php 10,000.00) each. The tabulators and the members of the Reception and Custody Group shall receive honorarium of Five Thousand Pesos (Php 5,000.00) each.

SECTION 14. Notice of Canvass. – For the May 9, 2016 National and Local Elections, the Chairperson of the DBOC shall give notice to its members, all presidential, vice-presidential, senatorial candidates, duly registered political party or coalition of political parties which has nominated national candidates, sectors and organizations participating under the party list system, and accredited citizen's arm of the date, time and place of canvass, at least five (5) days before the day of the election.

SECTION 15. Tabulation Group. – The DBOC shall constitute a Tabulation Group, composed of two (2) members, which shall be under its direct supervision and control.

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MODEL CASE 8 of (12)
Administrative Officer (R)

The copy of the COCV posted on the wall shall be open for public viewing at any time of the day for forty-eight (48) hours following its posting. Any person may view or capture an image of the COCV. After the prescribed period of posting, the Chairperson of the DBOC shall collect the posted COCV and keep the same in custody to be produced for image or data capturing as may be requested by any voter or for any lawful purpose as may be ordered by competent authority.

SECTION 18. Watchers. – During the counting and canvassing, each national candidate, duly registered political party or coalition of political parties which has nominated national candidates, sectors and organizations participating under the party list system, and accredited citizen's arm, shall be entitled to appoint, in writing, two (2) watchers serving alternately.

Civic, religious, professional, business, youth and any other similar organizations with prior authority from the Commission, shall collectively be entitled to appoint two (2) common watchers serving alternately.

RULE II FORMS, DOCUMENTS AND SUPPLIES

SECTION 1. Forms, documents and supplies. - The following forms, documents and supplies shall be provided for use on counting and canvassing:

ALLOCATION OF FORMS AND SUPPLIES FOR DETAINEE VOTING

May 9, 2016 National Elections

CEF NO.	Forms and Supplies	Rate of Distribution	
Election Forms			
A3	Poster Indicating Precinct Number	1	piece
A5 & A5-A	Appointment of Chairman/Poll Clerk/Member of BEI and Support Staff	9	pieces
9	Election Returns	1	sets of 8 copies by 8 pages
10	Tally Board	1	set of 13 pages
A11	Minutes of Voting and Counting	1	set of 2 pieces
A12	Paper Seals	32	pieces
	for A15, A16, A16-A, and A16-B	4	pieces
	for A18 and A18-A	2	pieces
	for Expandable Envelopes for Official Ballots (from precincts with Detainee Voters)	2	pieces
	Envelope for CEF 21, 20-A, and 20-A-2	8	pieces
	for election returns	8	copies

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	<i>for envelope of election returns</i>	8	<i>pieces</i>
A13	Certificates of Votes - SBEI Counting	20	<i>pieces</i>
A14	Certificate of Receipt of Official Ballots, Other Forms and Supplies for SBEI - Voting	2	pieces per Clustered Precinct with Detainee Voter
A27	Official Receipt of Election Returns	10	<i>pieces</i>
SPECIAL ENVELOPES			
17, 17-A, 17-B, 17-C, 17-D, 17-E, 17-F, 17-G	Envelope for election returns	1	set of 8 copies
A18 & 18-A	For Minutes of Voting and Counting of Votes	1	set of 2 pieces
	Expandable Envelopes for Official Ballots (from precincts with Detainee Voters)		
	Expandable Envelopes for Counted Ballots	4	pieces per SBEI - Counting
CANVASSING FORMS			
A13-A	Cert of Votes Received by Candidates for Board of Canvassers	58	<i>pieces / BOC</i>
21	Certificate of Canvass for Canvassers Detainee Voting	1	set of 4 pages by 8 copies
20-A	Statement of Votes by Precinct	5	sets of 6 pages by 6 copies
20-A-2	Summary Statement of Votes	1	sets of 6 pages by 6 copies
	Envelope for CEF 21, 20-A, and 20-A-2	1	set of 8 copies
SUPPLIES FOR SBEI			
	Bond Paper (Long)	30	sheets
	Ballpen	6	pieces
	Packaging Tape	1	piece
BALLOT BOXES	Marking Pen - counting (RED)	5	Pieces
	METAL BALLOT BOXES	20	Pieces
	Padlocks	40	Pieces
	Fixed Length Seals	60	Pieces

RULE III MISCELLANEOUS

SECTION 1. Applicability of Other Comelec Rules. – Rules and regulations promulgated by the Commission in connection with the May 9, 2016 National and Local Elections are, as far as applicable, hereby adopted, incorporated and made integral parts of this resolution.

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 Administrative Officer III (RO II)
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SECTION 2. Effectivity. – This Resolution shall take effect immediately after its publication in two (2) daily newspapers of general circulation in the Philippines.

SECTION 3. Publication and Dissemination. – Let the Education and Information Department (EID), this Commission, cause the publication of this Resolution in two (2) daily newspapers of general circulation in the Philippines.

The CoDV shall immediately furnish copies hereof to the Department of Education, Commission on Human Rights, Bureau of Jail Management and Penology, Armed Forces of the Philippines, Philippine National Police, Bureau of Corrections and all departments and agencies or instrumentalities of the national government, and all Regional Election Directors, Provincial Election Supervisors of the Commission, who shall in turn furnish copies thereof to their respective Election Officers.

SO ORDERED.

*Should comply with
existing laws and
prudence*
J. ANDRES D. BAUTISTA
Chairman

[Signature]
CHRISTIAN ROBERT S. LIM
Commissioner

[Signature]
AL A. PARRENO
Commissioner

[Signature]
LUIS TITO F. GUIA
Commissioner

[Signature]
ARTHUR D. LIM
Commissioner

[Signature]
MA. ROWENA AMELIA V. GUANZON
Commissioner

[Signature]
SHERIFF M. ABAS
Commissioner

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Administrative Officer III (RO II)
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ANNEX I

Republic of the Philippines
Commission on Elections
Manila

**SUPPLEMENTAL RULES
AND REGULATIONS IN
THE CONDUCT OF
COUNTING AND
CANVASSING OF BALLOTS
OF DETAINEE VOTERS
WITH VOTES CAST FOR
NATIONAL POSITIONS
ONLY IN CONNECTION
WITH THE MAY 9, 2016
NATIONAL AND LOCAL
ELECTIONS.**

BAUTISTA, J. Andres D.,
LIM, Christian Robert S.,
PARREÑO, Al A.,
GUIA, Luie Tito F.,
LIM, Arthur D.,
GUANZON, Ma. Rowena Amelia V.,
ABAS, Sheriff M.,

Chairman
Commissioner
Commissioner
Commissioner
Commissioner
Commissioner
Commissioner

Promulgated: May 18, 2016

RESOLUTION NO. 10141

WHEREAS, the Supreme Court, on April 19, 2016, in the case of *Aguinaldo v. New Bilibid Prison (Bureau of Corrections) et. al.*, G.R. No. 221201, issued a Temporary Restraining Order (TRO) enjoining the Commission on Elections, among others, from applying the following provisions of COMELEC Resolution No. 9371 on the local level: (i) Rule 1, Section 1; (ii) Rule 1, Section 2(a) and (c); (iii) Rule 3, Section 1; and (iv) Rule 7, Section 1;

WHEREAS, the TRO is not applicable to the May 9, 2016 National and Local Elections **on the national level**; thus, detainees are still allowed to vote but only for candidates on the national level if they so choose;

WHEREAS, the Commission on Elections has directed in the General Instruction to the Board of Elections Inspectors (BEI) that ballots of detainee voters containing votes for local candidates will be elevated to the Commissions Main Office in Manila for counting, and eventually, canvassing;

WHEREAS, on May 3, 2016, the Commission on Elections promulgated COMELEC Resolution No. 10113 to serve as the rules

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Administrative Officer III (RO II)

and regulations on the conduct of counting and canvassing of ballots of detainee voters with votes cast in favor of local candidates in connection with the May 9, 2016 National and Local Elections;

WHEREAS, despite the instructions laid down in Comelec Resolution No. 10113, ballots containing votes for national candidates only were elevated to the Committee on Detainee Voting, thus, necessitating the need to count and canvass the said ballots to avoid disenfranchisement of detainee voters;

NOW, THEREFORE, pursuant to the powers vested in it by the Constitution, the Omnibus Election Code, Resolution No. 9371 and other pertinent election laws, the Commission on Elections has **RESOLVED**, as it hereby **RESOLVES**, to promulgate the following supplemental rules and regulations on the conduct of counting and canvassing of ballots of detainee voters with votes cast in favor of national positions only in connection with the May 9, 2016 National and Local Elections:

SECTION 1. Adoption of Comelec Resolution No. 10113. - The Rules of counting and canvassing of detainee voters' ballots enunciated in Comelec Resolution No. 10113 is hereby adopted.

SECTION 2. Authority to Count and Canvass Detainee Voters' Ballots with Votes for National Positions Only. - The Special Board of Election Inspectors for Counting (SBEI-C) and Detainee Board of Canvassers (DBOC) constituted under Comelec Resolution No. 10113 are hereby given authority to count and canvass the detainee voters' ballots with votes cast for national positions only.

SECTION 3. Applicability of Other Comelec Rules. - Rules and regulations promulgated by the Commission in connection with the May 9, 2016 National and Local Elections are, as far as applicable, hereby adopted, incorporated and made integral parts of this resolution.

SECTION 4. Effectivity. - This Resolution shall take effect immediately after its publication in two (2) daily newspapers of general circulation in the Philippines.

SECTION 5. Publication and Dissemination. - Let the Education and Information Department (EID), this Commission, cause the publication of this Resolution in two (2) daily newspapers of general circulation in the Philippines.

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MEDEL C. DEASIS
Administrative Officer III (RO)

SO ORDERED.

J. ANDRES D. BAUTISTA
Chairman

CHRISTIAN ROBERT S. LIM
Commissioner

AL A. PARREÑO
Commissioner

LUIE TITO F. GUIA
Commissioner

ARTHUR D. LIM
Commissioner

MA. ROWENA AMELIA V.
GUANZON
Commissioner

SHERIFF M. ABAS
Commissioner

Comelec Resolution No. 10141 promulgated May 18, 2016

*Supplemental Rules and Regulations in the
conduct and counting and canvassing of ballots
of detainee voters with votes cast for national
positions only in connection with the May 9, 2016 NLE*

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