

REVISED RULES AND PROCEDURE ON ADMINISTRATIVE CASES OF THE BOARD OF FOREIGN SERVICE ADMINISTRATION

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WHEREAS, Section 50 of the Philippine Foreign Service Act of 1991 (Republic Act No. 7157) created the Board of Foreign Service Administration;

WHEREAS, Section 87 of the Philippine Foreign Service Act empowers the Secretary of Foreign Affairs to issue such rules and regulations as may be necessary to implement its provisions as well as the provisions of acts, decrees, and orders which are not inconsistent with it;

WHEREAS, by virtue of the Philippine Foreign Service Act, the Secretary of Foreign Affairs signed Department Order No. 10-04 on 06 April 2004 also known as the Rules and Procedure of the Board of Foreign Service Administration which governs the procedures in administrative investigations filed before the Board;

WHEREAS, the technical rules in administrative investigation embodied in Rule III (Disciplinary Cases) and Rule IV (Remedies) of the said Department Order, need to be updated and revised to be more responsive to the demands for speedy and orderly disposition of cases;

NOW, THEREFORE, the following shall be the rules and procedure to be followed in the handling of administrative complaints filed in the Department.

RULE I. PRINCIPLES

Section 1. Due Process. – No officer or employee of the Department shall be subjected to disciplinary action or otherwise removed or separated from the Service except for cause as provided by law and in accordance with the requirement of due process.

Due process means a reasonable opportunity for the respondent to be heard and to submit evidence in support of his/her arguments before a decision is rendered on the case.

Section 2. Rules of Procedure and Evidence. – Administrative investigations shall be conducted without strictly adhering to rules of procedure and evidence, including the Rules of Court.

In administrative cases, substantial evidence is the quantum of proof required.

Section 3. Alternative Dispute Resolution. – In the investigation of administrative cases against officers and employees of the Department, the rules embodied in this Department Order will govern without prejudice to any arrangement that the parties may agree upon for the expeditious resolution of the case. Resort to alternative dispute resolution of the case, if appropriate, should be encouraged.

Section 4. Suspension. – Subject to Sections 24 to 26, no officer or employee of the Department facing administrative charges shall be effectively suspended or otherwise prevented from exercising his normal duties and functions unless so ordered by the appropriate disciplinary authority on grounds provided for by law or regulations.

In the interest of harnessing all the human resources in the Department, no officer or employee shall be “frozen” or “floated” or otherwise deprived of assignment, duties, or functions appropriate to his/her rank and position, except for justifiable reasons.

RULE II. JURISDICTION

Section 5. Personal Jurisdiction. – This Department Order shall apply to all officers and employees of the Department in the Home Office, the Regional Consular Offices (RCOs), and Foreign Service Posts (FSPs), whether in the career or non-career service, and holding any level of position, or possessing permanent, temporary, casual, or contractual status, including consultants and detailed or seconded personnel, under the disciplinary jurisdiction of the President of the Philippines or the Secretary of Foreign Affairs.

The Rules embodied in this Department Order shall have suppletory application to the personnel of attached agencies of the Department in the Home Office and personnel of attached services in the Foreign Service Posts.

However, with respect to locally-hired or alien employees in the Foreign Service, the head of post concerned, upon prior clearance from the Department, may separate them from the service at any time for any cause that may be deemed sufficient for the purpose, in accordance with this Department Order and the employment contract.

Honorary Consuls may be separated from the service by the Secretary at any time.

Disciplinary action may be taken against an officer or an employee by the appropriate disciplinary authority, namely:

1. The President, for all presidential appointees, upon recommendation of the Secretary;
2. The Secretary, for all those appointed by him/her or by his/her predecessors;
3. The Chair of the Board of Foreign Service Administration;
4. The Assistant Secretary of the Office of Personnel and Administrative Services (OPAS) for minor infractions;
5. The Head of Posts

Chiefs of mission who are appointed by the President as Ambassadors Extraordinary and Plenipotentiary shall not be investigated by the Board or separated from the service unless there is a written directive or approval from the President.

Section 6. Subject Matter Jurisdiction. – This Department Order shall apply to the administrative offenses outlined in Section 9.

Where the same set of facts alleged constitutes, arises from, or is connected with a felony or a crime *malum prohibitum*, the administrative investigation shall proceed independently from the criminal case, unless otherwise directed by the competent judicial or quasi-judicial authority.

The following is a non-exhaustive list of felonies and crimes *mala prohibita* which may provide separate cause of action for administrative investigation:

- a. Applicable felonies outlined in Book II, Title VII, of Act No. 3815, otherwise known as the Revised Penal Code of the Philippines, as amended;
- b. The Anti-Graft and Corrupt Practices Act (Republic Act No. 3019, as amended);
- c. The Code of Conduct and Ethical Standards for Public Officials and Employees (Republic Act No. 6713, as amended);
- d. The Forfeiture of Unexplained Wealth Act (Republic Act No. 1379, as amended);
- e. The Philippine Passport Act (Republic Act No. 8239);

- f. The Civil Service Decree (Presidential Decree No. 807, as amended);
- g. The Government Auditing Code (Presidential Decree No. 1445, as amended); and
- h. The Omnibus Election Code (Batas Pambansa Blg. 881, as amended).

RULE III. OFFENSES AND PENALTIES

Section 7. Classification of Penalties and their Resulting Disabilities. – The following are the penalties that may be imposed for administrative offenses:

- a. The penalty of dismissal shall result in the permanent separation of the respondent from the service, with or without prejudice to criminal or civil liability. It carries with it the cancellation of eligibility for retirement benefits and, unless otherwise provided in the decision, the perpetual disqualification for reemployment in the government service.
- b. The penalty of suspension shall result in the temporary cessation of work for a period not exceeding one (1) year. Suspension of one day or more shall be considered a gap in the continuity of service. During the period of suspension, respondent shall not be entitled to all money benefits, including leave credits. Suspension carries with it disqualification from promotion corresponding to the period of suspension.
- c. The penalty of reprimand shall not carry with it any accessory penalty nor result in the temporary cessation of work.

A warning or admonition shall not be considered a penalty.

For any penalty, bar from taking any Civil Service examination may also be considered an accessory penalty.

Section 8. Effect of Exoneration on Certain Penalties. – In case the penalty imposed is dismissal or suspension, exoneration by final judgment shall lead to immediate reinstatement to the previous item or former post, without loss of seniority rights and with payment of back salaries.

The respondent who is exonerated shall be entitled to the leave credits corresponding to the period he/she had been out of the service. Mandatory leave benefits shall not be charged against the respondent's leave credits.

Section 9. Classification of Offenses. – Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following are grave offenses with corresponding penalties:

1. Disloyalty to the Republic of the Philippines and to the Filipino people: 1st offense – Dismissal
2. Grave misconduct: 1st offense – Dismissal
3. Gross neglect of duty: 1st offense – Dismissal
4. Dishonesty: 1st offense – Dismissal
5. Being notoriously undesirable: 1st offense – Dismissal
6. Falsification of official document: 1st offense – Dismissal
7. Conviction of a crime involving moral turpitude: 1st offense – Dismissal
8. Engaging directly or indirectly in partisan political activities: 1st offense – Dismissal
9. Receiving for personal use of a fee, gift or other valuable thing in the course of official duties or in connection therewith when such fee, gift, or other valuable thing is given by any person in the hope or expectation of receiving a favor or better treatment than that accorded to other persons or committing acts punishable under the anti-graft laws: 1st offense – Dismissal
10. Soliciting or accepting directly or indirectly any gift, gratuity, favor, entertainment, loan, or anything of monetary value in the course of official duties: 1st offense – Dismissal

11. Contracting loans of money or other property from persons with whom the office of the employee has business relations: 1st offense – Dismissal
12. Physical or mental incapacity or disability due to moral or vicious habits: 1st offense – Dismissal
13. Nepotism: 1st offense – Dismissal
14. Oppression: 1st offense – Suspension (6 months, 1 day to 1 year); 2nd offense – Dismissal
15. Gross violation of Civil Service laws, the Foreign Service Act, and reasonable Department rules and regulations: 1st offense – Suspension (6 months, 1 day to 1 year); 2nd offense – Dismissal
16. Refusal to perform official duty: 1st offense – Suspension (6 months, 1 day to 1 year); 2nd offense – Dismissal
17. Refusal of Assignment or Recall Order: 1st offense – Suspension (6 months, 1 day to 1 year); 2nd offense – Dismissal
18. Gross insubordination: 1st offense – Suspension (6 months, 1 day to 1 year); 2nd offense – Dismissal
19. Inefficiency and incompetence in the performance of official duties: 1st offense – Suspension (6 months, 1 day to 1 year); 2nd offense – Dismissal
20. Frequent unauthorized absences, tardiness in reporting for duty, or loafing during regular office hours: 1st offense – Suspension (6 months, 1 day to 1 year); 2nd offense – Dismissal
21. Directly or indirectly having financial and material interest in any transaction requiring the approval of the office. Financial and material interest is defined as pecuniary or propriety interest by which a person will gain or lose something: 1st offense – Suspension (6 months, 1 day to 1 year); 2nd offense – Dismissal
22. Owning, controlling, managing or accepting employment as officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by the office, unless expressly allowed by law: 1st offense – Suspension (6 months, 1 day to 1 year); 2nd offense – Dismissal
23. Disclosing or misusing confidential or classified information officially known by reason of the office and not made available to the public, to further private interests or give undue advantage to anyone to prejudice the public interest: 1st offense – Suspension (6 months, 1 day to 1 year); 2nd offense – Dismissal
24. Obtaining or using any statement filed under the Code of Conduct and Ethical Standards for Public Officials and Employees for any purpose contrary to morals or public policy or any commercial purpose other than by news and communications media for dissemination to the general public: 1st offense – Suspension (6 months, 1 day to 1 year); 2nd offense – Dismissal
25. Recommending any person to any position in a private enterprise which has a regular or pending official transaction with the office, unless such recommendation or referral is mandated by (a) law, (b) international agreement, commitment or obligation, or (c) as part of the function of the office: 1st offense – Suspension (6 months, 1 day to 1 year); 2nd offense – Dismissal
26. “Unsatisfactory” rating for three (3) consecutive years: 1st offense – Suspension (6 months, 1 day to 1 year); 2nd offense – Dismissal
27. Disgraceful and immoral conduct: 1st offense – Suspension (6 months, 1 day to 1 year); 2nd offense – Dismissal
28. Conduct prejudicial to the best interest of the Service: 1st offense – Suspension (6 months, 1 day to 1 year); 2nd offense – Dismissal

B. The following are less grave offenses with corresponding penalties:

1. Simple misconduct: 1st offense – Suspension (1 month, 1 day to 6 months); 2nd offense – Dismissal
2. Simple neglect of duty: 1st offense – Suspension (1 month, 1 day to 6 months); 2nd offense – Dismissal
3. Gross discourtesy in the course of official duties: 1st offense – Suspension (1 month, 1 day to 6 months); 2nd offense – Dismissal
4. Violation of Civil Service laws, the Foreign Service Act, and reasonable Department rules and regulations: 1st offense – Suspension (1 month, 1 day to 6 months); 2nd offense – Dismissal
5. Insubordination: 1st offense – Suspension (1 month, 1 day to 6 months); 2nd offense – Dismissal
6. Habitual drunkenness: 1st offense – Suspension (1 month, 1 day to 6 months); 2nd offense – Dismissal
7. Unfair discrimination in rendering public service due to party affiliation or preference: 1st offense –

Suspension (1 month, 1 day to 6 months); 2nd offense – Dismissal

8. Failure to file sworn statements of assets, liabilities and net worth, and to disclose business interests and financial connections including those of their spouses and unmarried children under eighteen (18) years of age living in their households: 1st offense – Suspension (1 month, 1 day to 6 months); 2nd offense – Dismissal

9. Failure to resign from position in the private business enterprise within thirty (30) days from assumption of public office when conflict of interest arises, and/or failure to of shareholdings or interest in private business enterprise within sixty (60) days from assumption of public office when conflict of interest arises; Provided, however, that for those who are already in the service and conflict of interest arises, the official or employee must either resign or divest of said interest within the periods indicated above: 1st offense – Suspension (1 month, 1 day to 6 months); 2nd offense – Dismissal

C. The following are light offenses with corresponding penalties:

1. Discourtesy in the course of official duties: 1st offense – Reprimand; 2nd offense – Suspension (1 to 30 days); 3rd offense – Dismissal

2. Improper or unauthorized solicitation of contributions from subordinate officers and employees: 1st offense – Reprimand; 2nd offense – Suspension (1 to 30 days); 3rd offense – Dismissal

3. Borrowing money by superior officers from subordinates: 1st offense – Reprimand; 2nd offense – Suspension (1 to 30 days); 3rd offense – Dismissal

4. Willful failure to pay just debts or failure to pay taxes due to the government. The term “just debts” shall apply only to claims adjudicated by a court of law, or claims the existence and justness of which are admitted by the debtor: 1st offense – Reprimand; 2nd offense – Suspension (1 to 30 days); 3rd offense – Dismissal

5. Violation of reasonable office rules and regulations: 1st offense – Reprimand; 2nd offense – Suspension (1 to 30 days); 3rd offense – Dismissal

6. Habitual tardiness: 1st offense – Reprimand; 2nd offense – Suspension (1 to 30 days); 3rd offense – Dismissal

7. Refusal to render overtime service: 1st offense – Reprimand; 2nd offense – Suspension (1 to 30 days); 3rd offense – Dismissal

8. Lobbying for personal interest or gain in legislative halls and offices without authority: 1st offense – Reprimand; 2nd offense – Suspension (1 to 30 days); 3rd offense – Dismissal

9. Gambling prohibited by law: 1st offense – Reprimand; 2nd offense – Suspension (1 to 30 days); 3rd offense – Dismissal

10. Promoting the sale of tickets on behalf of private enterprises that are not intended for charitable or public welfare purposes, and even in the latter cases, if there is no prior authority: 1st offense – Reprimand; 2nd offense – Suspension (1 to 30 days); 3rd offense – Dismissal

11. Failure to act promptly on letters and request within fifteen (15) days from receipt, except as otherwise provided in the rules implementing the Code of Conduct of Ethical Standards for Public Officials and Employees: 1st offense – Reprimand; 2nd offense – Suspension (1 to 30 days); 3rd offense – Dismissal

12. Failure to process documents and complete action on documents and papers within a reasonable time from preparation thereof, except as otherwise provided in the rules implementing the Code of Conduct and Ethical Standards for Public Officials and Employees: 1st offense – Reprimand; 2nd offense – Suspension (1 to 30 days); 3rd offense – Dismissal

13. Failure to attend to anyone who wants to avail of the services of the office, or to act promptly and expeditiously on public transactions: 1st offense – Reprimand; 2nd offense – Suspension (1 to 30 days); 3rd offense – Dismissal

14. Engaging in the private practice of his/her profession, unless authorized by the Constitution, law or regulation; Provided, that such practice will not conflict with his/her official functions: 1st offense – Reprimand; 2nd offense – Suspension (1 to 30 days); 3rd offense – Dismissal

15. Pursuit of private business, vocation, or profession without the permission required by Civil Service rules and regulations: 1st offense – Reprimand; 2nd offense – Suspension (1 to 30 days); 3rd offense – Dismissal

16. Disgraceful, immoral or dishonest conduct prior to entering the Service: 1st offense – Reprimand; 2nd

offense – Suspension (1 to 30 days); 3rd offense – Dismissal

Section 10. Mitigating, Aggravating or Alternative Circumstances. – Mitigating, aggravating, or alternative circumstances may be appreciated in determining the appropriate penalty to be imposed. Such circumstances may include:

- a. taking undue advantage of subordinate;
- b. undue use or disclosure of confidential information;
- c. use of government property in the commission of the offense;
- d. habituality or recidivism;
- e. offense is committed during office hours and within the premises of the offices or building;
- f. employment of fraudulent means to commit or conceal the offense;
- g. length of service in the government;
- h. education;
- i. admission of guilt in answer; or
- j. other analogous circumstances.

If the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count, and the rest shall be considered as aggravating circumstances.

RULE IV. PROCEDURE

Section 11. Initiation of Proceedings. – Administrative proceedings may be initiated motu proprio by the Secretary or by other disciplining authority, or upon complaint by any person.

Section 12. Complaint. – Except when initiated by the Secretary or by the disciplining authority, no complaint against an officer or employee shall be given due course unless the same is in writing and subscribed and sworn to by the complainant. No anonymous complaint shall be entertained.

All complaints shall be filed with OPAS. Complaints submitted to the BFSa Secretariat shall be immediately referred to OPAS for appropriate action.

The complaint shall contain the following:

1. The full name and address of the complainant;
2. The full name and address of the person complained of, as well as his position and office of employment;
3. A narration of the relevant and material facts which shows the acts or omissions allegedly committed by the officer or employee;
4. Certified true copies of documentary evidence and affidavits of his witnesses, if any; and
5. Certification of non-forum shopping.

In the absence of any one of the above-mentioned requirements, OPAS shall inform the complainant to submit the requirements which are lacking. The complainant must submit the requested documents within ten (10) days from receipt of such notification, otherwise the complaint shall be dismissed.

The complaint shall be written in clear, simple and concise language and in a systematic manner so as to apprise the officer or employee concerned of the nature and cause of the accusation against him/her and to enable him/her to intelligently prepare his/her answer.

Section 13. Withdrawal of the Complaint. – The withdrawal of the complaint does not result in its outright dismissal nor discharge the person complained of from any administrative liability. Where there is sufficient

documentary or object evidence to establish a prima facie case against the person complained of, the same should be given due course.

Section 14. Action on the Complaint. – Upon receipt of a complaint, OPAS shall evaluate whether it is sufficient in form and substance. If the complaint is not sufficient in form and substance, the same shall be dismissed summarily by OPAS, with notice duly furnished the complainant.

The complaint shall neither be considered sufficient in substance if OPAS determines that the narration of the relevant and material facts does not constitute or allege an administrative offense under Section 9 or in relation to Section 6. If the complaint essentially alleges a personal matter between the complainant and the person complained of, OPAS shall endeavor to settle the matter through modes of dispute resolution including conciliation and mediation.

If the complaint is sufficient in form and substance, OPAS shall notify the person complained of in writing to submit an answer under oath within ten (10) days from receipt of the said notice. A copy of the complaint shall be attached to the notification. OPAS may also require both parties to submit other evidence which may be necessary for the proper determination of the case. Failure of the person complained of to submit his/her answer within the prescribed period shall be considered as a waiver of his/her right to do so.

Upon receipt of the answer and other supporting documents and evidence that the parties may submit, OPAS shall resolve the complaint. If the acts complained of involve culpable violation of any law, rule or regulation or if the actions resulted in financial loss or otherwise to the Department, OPAS may elevate the case to the BFSA Chair for further action and the latter shall direct the Office of Legal Affairs (OLA) to conduct a preliminary investigation ex parte.

Section 15. Admission by Person Complained of. – If in his/her answer the person complained of admits the allegations of the complaint and does not raise any counterclaim thus resulting in no joinder of issue, OPAS shall immediately recommend that the appropriate disciplining authority consider imposing the corresponding penalty, appreciating the admission as a mitigating circumstance.

Section 16. Filing. – Any affidavit, counter-affidavit, motion, petition, appeal, or other pleadings required to be filed under this Department Order may be done so personally, by registered mail, e-mail or fax, or if the person required to file is assigned abroad, through diplomatic pouch subject to the requirement under Section 12. The document or pleading shall be deemed filed on the date of receipt by the proper office stamped on the document or pleading, if filed personally; or on the date of mailing, as shown by the post office stamp on the envelope or the registry receipt.

Section 17. Service. – Any decision, order, and notice to be served under this Department Order may be done so personally or, if the person required to be served is assigned abroad, through the diplomatic pouch. The document or pleading shall be deemed served on the date of receipt by the proper office stamped on the document or pleading, if served personally; or on the date received by the person being complained of.

Personal service under this Department Order may be made by delivering personally a copy to the party or his/her counsel, or by leaving it in his/her office with his/her clerk or with a person having charge thereof. If no person is found in the office, or if the office is not known, or he/she has no office, then by leaving the copy between the hours of eight in the morning and six in the evening, at the party's or counsel's residence, if known, with a person of sufficient age and discretion then residing therein.

Section 18. Fact-finding Team/Mission. – Upon the recommendation of OPAS, OFM, or OLA, the Undersecretary for Administration may direct the dispatch of a Fact-finding Team when the circumstances

warrant the deployment of a team to a Foreign Service Post or a Regional Consular Office (RCO) to establish the veracity of the complaint. The Fact-finding Team, prior to their departure, shall be provided by OLA with specific instructions as to the questions to be propounded, issues to be clarified and such other matters which would aid them in the performance of their mission.

The complainant and the respondent shall be notified by the Fact-finding Team of the investigation and be given an opportunity to be heard and submit evidence in their favor.

Should the case involve a finding of irregularity that may lead or have led to financial loss for the government based on a report by OFM and/or the Commission on Audit (COA), the BFSA Chair may direct the filing of a formal complaint on the basis of the OFM and/or COA report.

Pursuant to their mission and if circumstances merit the speedy resolution of the case, the Fact-finding Team may facilitate the settlement of the controversy by resorting to various modes of alternative dispute resolution, including but not limited to conciliation and mediation. The settlement and the recommended course of action shall be included in the Fact-finding Team's report, which shall be deliberated upon in the next regular Board meeting or in a Special Board meeting called for the purpose.

The Board may choose to adopt the recommendation of the Fact-finding Team and endorse its approval to the Secretary. If the Board adopts the findings and recommendation of the Fact-finding Team and the same is approved by the Secretary, the settlement shall conclude the case.

However, should the Board make a finding which is contrary to that of the Fact-Finding team on the case, it may direct OLA to proceed with the filing of the formal charge and assign the case to a Hearing Panel, pursuant to Section 27 of this Department Order.

The report of the Fact-finding Team containing the findings and recommendations shall be submitted directly to the BFSA Chair. If the report concludes with a finding of a prima facie case, the BFSA Chair shall forward the case to OLA and direct the latter to prepare and file the appropriate formal charge(s). However, if there is no prima facie case, the Fact-finding report shall be submitted to the BFSA for the dismissal of the complaint.

Section 19. Preliminary Investigation. – Preliminary investigation involves the ex parte examination of records and documents submitted by the complainant and the person complained of. It shall be conducted by OLA, only when necessary, within fifteen (15) days upon receipt of the order from the BFSA Chair or of the records of the case for, the purpose of determining whether a prima facie case exists to warrant the filing of a formal charge, and shall be terminated within thirty (30) days thereafter. However, OLA may request to have the period extended subject to the approval of the BFSA Chair.

OLA may resort to other modes of discovery and invite the concerned parties for a conference to answer clarificatory questions. In cases already covered by a Fact-finding report, the same shall stand as the preliminary investigation of the case, and OLA may move forward with the preparation of the formal charge on the basis thereof together with other evidence which the Fact-finding team and the parties submitted.

If the Fact-finding report is not sufficient, as when there remain matters that need to be clarified, a preliminary investigation may be conducted in addition to the conduct of a Fact-finding investigation.

Section 20. Preliminary Investigation Report. – Within ten (10) days from the termination of the preliminary investigation, OLA shall submit its report and recommendation to the BFSA Chair.

The preliminary investigation shall state its findings of facts and law with the corresponding recommendation on the proper disposal of the case. If the investigation finds a prima facie case, OLA may move forward with the

preparation of the formal charge and submit it to the BFSA Chair.

If there is no finding of a prima facie case, OLA may recommend to the BFSA Chair the summary dismissal of the complaint. In the next regular Board meeting or in a special Board meeting called for the purpose, the Board may adopt OLA's recommendation for the dismissal of the case. The complainant and the person complained of shall both be notified in writing of the dismissal.

In all instances, the recommendations from either the preliminary investigation or the Fact-finding report shall not bind the BFSA and the latter may choose to adopt or reject the recommendations should there be material inconsistencies in the appreciation of the facts and the governing laws or regulations on the case.

Section 21. Prosecution of the Case. – OLA shall prosecute the case on behalf of the Department. The counsel for the private complainant, if any, may assist in the prosecution of the case, under the direct supervision and control of OLA.

Section 22. Formal Charge. – The formal charge shall contain:

- a. a specification of charge(s);
- b. a brief statement of material or relevant facts, accompanied by certified true copies of the documentary evidence, if any;
- c. sworn statements covering the testimony of witnesses;
- d. a directive to answer the charge(s) in writing under oath within fifteen (15) days from receipt thereof;
- e. an advice for the respondent to indicate in his/her answer whether or not he/she elects a formal hearing of the charge(s); and
- f. a notice that he/she is entitled to be assisted by a counsel of his/her choice.

The BFSA Chair shall direct the respondent to answer and inform him/her of his/her right to counsel, and the BFSA Chair shall assign the case to a Hearing Panel.

Section 23. Answer. – The answer, which must be in writing and under oath, shall be specific and contain material facts and applicable laws, if any, together with supporting sworn statements and documents, in which the respondent shall indicate whether or not he/she elects a formal hearing.

No requests for clarification, bills of particulars, or motions to dismiss, shall be entertained by the Board, as they are obviously designed to delay the proceedings. If any of these pleadings are interposed by the respondent, the same shall be considered as an answer and shall be evaluated as such.

If the respondent fails or refuses to file an answer to the formal charge within fifteen (15) days from receipt thereof, he/she shall be considered to have waived his/her right thereto, and the Hearing Panel can proceed to hear the case.

Section 24. Preventive Suspension. – Upon petition of the complainant or motu proprio, the disciplining authority may issue an order of preventive suspension upon service of the formal charge, or immediately thereafter, to any subordinate officer or employee under his/her authority pending an investigation, if the charge involves:

- a. Dishonesty;
- d. Oppression;
- c. Grave Misconduct;
- d. Neglect in the performance of duty; or
- e. If there are reasons to believe that the respondent is guilty of charges which would warrant his/her removal from the service.

An order of preventive suspension may be issued to temporarily remove the respondent from the scene of his/her

alleged non-feasance, misfeasance or malfeasance, and to preclude the possibility of exerting undue influence or pressure on the witnesses against him/her or tampering of documentary evidence on file with his/her office.

In lieu of preventive suspension, and for the same purpose, the proper disciplining authority may reassign respondent to other offices or recall him/her to the Home Office, if assigned abroad, for the duration of the conduct of administrative proceedings, unless otherwise ordered by the disciplining authority.

Section 25. Duration of Preventive Suspension. – When the administrative case against an officer or employee under preventive suspension is not finally decided by the disciplining authority within the period of ninety (90) days after the date of his/ her preventive suspension, unless otherwise provided by special law, he/she shall be automatically reinstated in the service; Provided, that when the delay in the disposition of the case is due to the fault, negligence, or petition of the respondent, the period of delay should not be included in the counting of the 90-day calendar-day period of preventive suspension; Provided, further, that should the respondent be on approved leave, said preventive suspension shall be deferred or interrupted until such time that said leave has been fully consummated.

Section 26. Remedies from Order of Preventive Suspension. – The respondent may file a motion for reconsideration with the disciplining authority within fifteen (15) days from receipt of the order of preventive suspension.

The timely filing of a motion for reconsideration shall not stay the execution of the order of preventive suspension. Should the motion for reconsideration be granted, the respondent shall be entitled to automatic reinstatement without loss of seniority rights, and to all salaries and benefits due him/her during the duration of the nullified order of preventive suspension.

The order of preventive suspension issued by the Secretary may be elevated to the Civil Service Commission (CSC) by way of an appeal within fifteen (15) days from receipt of the order denying respondent's motion for reconsideration.

Section 27. Hearing Panels. – There shall be created a sufficient number of Hearing Panels which shall hear administrative cases referred to them by the BFSA, and make recommendations to the BFSA for its proper disposition.

Each Hearing Panel shall be composed of a Chairperson and two (2) members, whether in active service or retired personnel of the Department. At least one (1) of them shall be a member of the Bar.

OPAS shall, at least once a year, recommend to the BFSA Chair a pool of active or retired Department personnel, of known probity and integrity, who may be appointed to Hearing Panels.

Each Hearing Panel shall serve as such for a period not to exceed one (1) year after the appointment of its members, provided that all cases referred to it have been resolved. If still pending, the records of the case shall be properly transmitted to the appropriate Hearing Panel which will take over the hearing of the case. Thereafter, the Undersecretary for Administration shall continuously appoint succeeding Chairpersons and members of the Hearing Panel.

Upon receipt of the formal charge and answer, the BFSA Chair shall assign the case to the Hearing Panel. The Board Secretariat shall transmit to the Hearing Panel the complete records of the case which shall include the following:

- a. Formal Charge;
- b. Answer to the Formal Charge;

- c. Preliminary Investigation Report;
- d. Fact-finding Investigation Report, if any;
- e. Counter-Affidavit/Comments, if any; and
- f. Complaint.

Section 28. Conduct of Formal Hearing. – The BFSa, through the Hearing Panel, shall conduct the formal hearing which shall be held not earlier than fifteen (15) days nor later than thirty (30) days from the date the BFSa shall have assigned the case to the Hearing Panel. If the respondent is assigned abroad, the testimony of witnesses may be received by the Hearing Panel through deposition on written interrogatories and cross-interrogatories.

Section 29. Pre-Hearing Conference. – At the commencement of the formal hearing, the Hearing Panel may conduct a pre-hearing conference for the parties to appear, to consider and agree on the following:

- a. Stipulation of facts;
- b. Simplification of issues;
- c. Identification and marking of evidence of the parties;
- d. Waiver of objections to admissibility of evidence;
- e. Limiting the number of witnesses, and their names;
- f. Dates of subsequent hearings; and
- g. Such other matters as may aid in the prompt and just resolution of the case.

The parties may submit position papers or memoranda and submit the case for resolution based on the result of the pre-hearing conference without any need for further hearings.

Should the respondent make a manifestation of his/her willingness to enter into a compromise agreement, the same shall be negotiated with the Hearing Panel. If a compromise is reached, the agreement together with recommendations on the proper disposal of the case shall be submitted by the Hearing Panel to the BFSa for decision.

Section 30. Continuous Hearing Until Terminated; Postponement. – Hearings shall be conducted on the hearing dates set by the Hearing Panel as agreed upon during the pre-hearing conference.

When no pre-hearing conference is conducted, the parties, their counsel and witnesses, if any, shall be given a notice of at least fifteen (15) days before the first scheduled hearing specifying the time, date, and place of the said hearing and subsequent hearings. Thereafter, the schedule of hearings previously set shall be strictly followed without further notice.

A party shall be granted only two (2) postponements, for valid reasons, upon oral or written requests.

If the respondent fails or refuses to appear during the scheduled hearings despite due notice, the investigation shall proceed ex parte and the respondent is deemed to have waived his right to be present and to submit evidence in his favor during those hearings.

Section 31. Preliminary Matters. – At the start of the hearing, the Hearing Panel shall note the appearances of the parties and shall proceed with the reception of evidence for the complainant.

If the respondent appears without the aid of counsel, he/she shall be deemed to have waived his/her right thereto.

Before taking the testimony of a witness, the Hearing Panel shall place him/her under oath and then take his/her name, address, civil status, age, and place of employment.

A sworn statement of a witness properly identified and affirmed shall constitute his/ her direct testimony, copy

furnished the other party.

Section 32. Appearance of Counsel. – A party who initiated a complaint or is the subject of proceedings under this Department Order may be aided by counsel. Any legal counsel appearing before the Hearing Panel shall manifest orally or in writing his/ her appearance for either the respondent or complainant, stating his/her full name, Roll number, IBP receipt number, and exact address where he/she can be served with notices and other pleadings. Any pleading or appearance of legal counsel without complying with the above stated requirements shall not be recognized.

Section 33. Order of Hearing. – Unless the Hearing Panel directs otherwise, the order of hearing shall be as follows:

- a. The prosecution shall present its evidence subject to the pre-hearing agreement;
- b. Cross-examination by the party;
- c. There may be re-direct and re-cross examination;
- d. The respondent shall then offer evidence in support of the defense following the same order; and
- e. Rebuttal and sur-rebuttal, if any.

When the presentation of evidence has been conducted, the parties shall formally offer said evidence either orally or in writing. Objections thereto may also be made either orally or in writing. Thereafter, both parties may be given time to submit their respective memorandum, which in no case shall be beyond ten (10) days after the termination of the hearing. Failure to submit the same within the given period shall be considered a waiver thereof.

Section 34. Objections. – All objections raised during the hearing shall be resolved by the Hearing Panel. The Panel shall accept all evidence deemed material and relevant to the case. In case of doubt, the Panel may allow the admission of evidence subject to the objection interposed against its admission.

Section 35. Markings. – All documentary evidence or exhibits shall be properly marked by letters (A, B, C, etc.) if presented by the complainant and by numbers (1, 2, 3, etc.) if presented by respondent. These shall form part of the complete records of the case.

Section 36. Request for Subpoena. – If a party desires the attendance of a witness or the production of documents, he shall make a request for the issuance of the necessary subpoena ad testificandum and/or subpoena duces tecum, at least three (3) days before the scheduled hearing. The Hearing Panel may issue subpoena ad testificandum to compel the attendance of witnesses and subpoena duces tecum for the production of documents or things.

Section 37. Records of Proceedings. – Records of proceedings during the formal hearing may be taken in shorthand of stenotype or any other mode of recording. A transcript of the records, duly certified as correct by the recording officer, shall be considered the prima facie record of the testimony and proceedings.

Section 38. Effect of the Pendency of an Administrative Case. – Pendency of an administrative case shall not disqualify respondent from promotion or claiming maternity or paternity benefits. For this purpose, an officer or employee is subject of a pending administrative case when the BFSa has issued a formal charge against him/her or has submitted his/her case to the Office of the Ombudsman or to the Sandiganbayan, as the case may be.

Section 39. Report of the Hearing Panel. – Within thirty (30) days after the conclusion of the formal hearing, the Hearing Panel shall submit its report to the BFSa Chair containing its finding of guilt or innocence of the respondent. The report shall also contain the Panel's recommendation on the proper disposal of the case and, if there is a finding of guilt, the imposable penalty.

If no hearing has been conducted, the Panel shall nevertheless submit a report and a recommendation to the BFSa within fifteen (15) days from receipt of the answer or compromise agreement, as the case may be, based on the records and evidence submitted to it.

On the next regular or special meeting of the BFSa after the receipt of the report of the Panel, the BFSa shall deliberate on the same and render a decision on the recommendation of the Panel, or may remand it to the Panel to resolve questions raised by BFSa members.

Section 40. When Case is Decided. –

a. Cases concerning officers with the rank of FSO, Class IV and higher

The BFSa shall submit its recommendation to the Secretary within ten (10) days from the regular or special meeting when the decision on the recommendation of the Hearing Panel was rendered. The recommendation shall include the entire records of the case as well as a draft recommendation for the President. In turn, the Secretary shall submit a recommendation to the President within fifteen (15) days from receipt of the recommendation of the BFSa. The President shall render his decision on the case. The applicable rules, regulations, guidelines of the Office of the President shall be observed.

b. Cases concerning other personnel

The BFSa shall submit its recommendation to the Secretary within ten (10) days from the regular or special meeting when the decision on the recommendation of the Hearing Panel was rendered. The recommendation shall include the entire records of the case as well as the draft decision for consideration by the Secretary.

Section 41. Finality of Decisions. – A decision rendered by the disciplining authority shall be final and executory fifteen (15) days after its receipt by the respondent and no motion for reconsideration or notice of appeal has been filed.

RULE V. REMEDIES

Section 42. Motion for Reconsideration. – Any party to the case may file a motion for reconsideration with the disciplining authority which rendered the decision within fifteen (15) days from receipt thereof. It shall be based on any of the following grounds:

- a. New and material evidence has been discovered which the respondent could not with reasonable diligence have discovered and produced during the investigation which materially affects the decision rendered;
- b. The decision is not supported by the evidence on record; or
- c. Errors of law or irregularities have been committed which are prejudicial to the interest of the movant.

The filing of a motion for reconsideration within the reglementary period of fifteen (15) days shall stay the execution of the decision sought to be reconsidered.

Only one motion for reconsideration shall be entertained.

Section 43. Filing of Appeal with the Civil Service Commission. – Decisions rendered by the Secretary may be appealed to the Civil Service Commission (CSC) within a period of fifteen (15) days from receipt thereof.

A notice of appeal including the appeal memorandum shall be filed with the CSC, copy furnished the Secretary. The latter shall, within fifteen (15) days, submit to the CSC the records of the case, which shall be systematically and chronologically arranged, paged, and securely bound to prevent loss, with his/her comment. The applicable

rules, regulations, and guidelines promulgated by the CSC shall be observed.

Section 44. When Case is Remanded for Violation of Respondent's Right to Due Process. – If the case on appeal with the CSC is remanded to the Secretary for further investigation, the Secretary through the BFSA, shall finish the investigation within three (3) calendar months from the date of the receipt of the records from the CSC, unless the investigation is delayed due to the fault, negligence, or petition of the respondent, or an extension is granted by the CSC in meritorious cases. The period of delay shall not be included in the computation of the prescribed period. The standard procedural requirements in this Department Order shall be applied.

Implemented decisions of the Secretary shall be considered as preventive suspension during the period when the case is remanded for further investigation.

If, at the end of the stipulated period, the Secretary fails to decide the case, the CSC shall vacate and set aside the appealed decision and declare the respondent exonerated of the charge. If the respondent is under preventive suspension, he/she shall be immediately reinstated without loss of seniority rights, salaries, and benefits.

Section 45. Appeal with the Court of Appeals – Decisions rendered by the President and the CSC shall be appealable to the Court of Appeals under Rule 43 of the 1997 Rules of Court.

An appeal shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension, subject to applicable Civil Service rules and regulations during the pendency of the appeal in the event he wins an appeal.

Section 46. Recommendation for an Executive Clemency. – In meritorious cases and upon the recommendation of the CSC and/or the Secretary, the President may commute or remove administrative penalties or disabilities imposed upon officers or employees in disciplinary cases, subject to such terms and conditions as the President may impose in the interest of the Service.

For this purpose, a petition for a favorable recommendation for the grant of executive clemency may be filed by a dismissed or disciplined employee with the CSC or the Secretary upon the submission of the following:

- a. Certified true copy of the decision in the disciplinary case with a favorable recommendation by the Secretary;
- b. Certification from reputable members of the community where he/she resides to the effect that he/she has become a useful member thereof;
- c. Proof of non-pendency of an appeal/petition for review relative to his/her disciplinary case before any court/tribunal; and
- d. If the petition is filed with the CSC, other requirements provided by its rules and regulations.

Section 47. Effectivity. – This Department Order shall take effect after fifteen (15) days from the date of its deposit with the Office of the National Administrative Register (ONAR) and publication in the Official Gazette or in any newspaper of general circulation.

Section 48. Repealing Clause. – The provisions of Rules III, IV, V and Sections 68, 69 and 70 of Rule VI of Department Order No. 10-04 entitled "Rules and Procedures of the Board of Foreign Service Administration" signed on 06 April 2004 and all rules and regulations inconsistent herewith are hereby repealed or modified accordingly.

On matters not covered by this Department Order, the applicable Rules and Regulations of the Civil Service Law shall apply in suppletory character.

Section 49. Separability Clause. – If any provision of this Department Order or the application of such provision to any circumstances is held invalid, the remainder of this Department Order shall not thereby be affected.

(SGD.) RAFAEL E. SEGUIS

Acting Secretary of Foreign Affairs

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