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DEFINING AND DELINEATING THE JURISDICTION OF THE OFFICES INVOLVED IN THE DISPOSITION OF ADMINISTRATIVE CASES AGAINST UNIFORMED MEMBERS OF THE PNP FILED BEFORE PNP DISCIPLINARY A...

PNP MEMO CIRCULAR NO. 2007-001, March 03, 2007

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I. References:

a. Section 41 (b) (3) and 42, RA No. 6975, as amended by Sections 52 and 53, RA No. 8551; and

b. Section 26, RA 6975.

II. Purpose:

This Circular aims to define and delineate the present procedures and provide guidelines in the handling and disposition of administrative cases filed against uniformed members of the PNP with the end in view of ensuring the expeditious administration of discipline within PNP ranks by avoiding atrocious delay without ignoring, however, the basic requirements of due process.

III. Scope of Application:

This Circular shall apply to and govern the disposition and implementation of administrative complaints filed before or have been referred to the Directorate for Investigation and Detective Management (DIDM) and Regional Intelligence and Investigation Division (RIID) for preliminary investigation and, in case of probable cause warranting summary hearing, the Chief, PNP or the Regional Director or Director, NSU, as the case may be, is the Disciplinary Authority.

IV. Definition of Terms:

- Affidavit is a statement or declaration reduced to writing and sworn to or affirmed before an officer who has authority to administer an oath or affirmation.

- Affidavit of Desistance is a sworn statement executed by a complainant in a criminal or administrative case that he or she is discontinuing or disavowing the action filed by him or her for whatever reason he or she may cite. The PNP attaches no persuasive value to a desistance, especially when executed as an afterthought.

- Preliminary Investigation is an inquiry conducted by the DIDM or RIID to determine whether there is sufficient ground to engender a well-founded belief that an administrative offense has been committed and the respondent is probably liable thereof and should be held for a formal investigation.

- Probable Cause refers to the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the investigating officer, that the PNP member complained of is liable for the administrative offense for which he should be formally investigated.

- Summary Hearing Officer is the designated representative of the Disciplining Authority who is tasked to hear,

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conduct the necessary proceedings, receive and evaluate the evidence presented and prepare the appropriate report for reconsideration by the Disciplining Authority.

- Answer is a verified pleading in which the respondent sets forth his admissions and/or defenses to the administrative offense with which he was charged. In lieu of answer, respondent may submit a counter affidavit or a verified position paper.

- Subpoena is a process directed to a person requiring him to attend and to testify at the hearing or investigation of an administrative case.

- PNP Disciplinary Authorities refer to the PNP Regional Directors, Directors of National Support Units, and the Chief, PNP who could impose the maximum disciplinary sanction of dismissal from the police service pursuant to reference 1a above.

- Decision is the written disposition of a case signed by the Disciplining Authority stating clearly the findings of facts and the provisions of law, rules and regulations applicable.

- Substantial Evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. It is the quantum of evidence required to establish a fact in cases before administrative and quasi-judicial bodies.

- Motion for Reconsideration is an application submitted by the respondent to the Disciplining Authority to set aside or modify the decision based on newly discovered evidence, errors of law or irregularities committed during the hearing prejudicial to his substantial rights, lack of substantial evidence, or the penalty imposed is too harsh.

- Proof of Service is evidence submitted by a process server that he has furnished the parties to an administrative case, particularly the respondent, of the decision or resolution rendered by the Disciplinary Authority.

- Notice of Appeal is a written notification filed by the respondent with the Disciplinary Authority who rendered the adverse decision that he is elevating the case on appeal to the NAPOLCOM appellate board based on the grounds specified thereon and which shall state the material dates showing the timeliness of the appeal.

- Appellate Authorities refers to the National Appellate Board when the decision appealed from was rendered by the Chief, PNP and the Regional Appellate Board when the decision appealed from was rendered by Director, Police Regional Office or Director, National Support Unit.

- Implementing Order is an order issued by the DPRM at the NHQ or RPHRDD at the PRO or its equivalent office in the NSU based on the final decision or resolution rendered by a PNP Disciplinary Authority or Appellate Authority implementing the administrative sanction imposed against a respondent.

V. Procedures:

- Complaints or official reports against PNP uniformed personnel whether filed directly with the Disciplinary Authority or with the DIDM at the NHQ, the RADIN at the PRO or its equivalent office in the NSU, or at any other offices outside the PNP which were subsequently referred to the PNP for appropriate action shall undergo a preliminary investigation by the DIDM, RADIN or its equivalent office in the NSU as the case may be.

- The preliminary investigation shall be conducted in accordance with existing rules and regulations promulgated by the NAPOLCOM. If probable cause is wanting, the DIDM, RADIN or its equivalent office in the NSU, as the case may be, shall prepare a report of investigation addressed to the Disciplinary Authority concerned with a recommendation that the complaint or report shall be dropped and closed for lack of probable cause.

- If probable cause is established warranting the conduct of a formal investigation, the recommendation that the

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PNP member respondent should be subjected to summary hearing shall be approved by the Disciplinary Authority except in cases where the respondents are Presidential appointees, in which case the President's approval must first be secured. After approval, the complete records of the case shall be forwarded to the DPRM or the RPHRDD or its equivalent office in the NSU for the designation of the SHO and the issuance of appropriate order.

- Once order is issued, the complete records of the case shall be transmitted to the SHO for summary hearing. The summary hearing shall be completed for a period of not more than sixty (60) days from receipt of the complete records of the case. The SHO shall return the complete records of the case, along with the documents submitted by the parties concerned during the summary hearing, his report of summary hearing and the draft decision to the DPRM, the RPHRDD or its equivalent office in the NSU.

- Upon receipt of the report of summary hearing and the complete records of the case from the SHO, the DPRM or the RPHRDD or its equivalent office in the NSU shall, after recording and corrections of the draft decision, submit these papers to the Disciplinary Authority concerned for consideration or may refer them to the NHQ or PRO Legal Service or the NSU Legal Officer for appropriate action. In the event that the DPRM, the RPHRDD or its equivalent office in the NSU, or the Legal Service or Legal Officer shall disagree with the findings and recommendation of the SHO, the factual grounds and legal reasons thereof must be so clearly stated.

- The DPRM or the RPHRDD or its equivalent office in the NSU shall implement the decision by furnishing the parties concerned with an authenticated copy thereof and shall require them to sign a proof of service. The proof of service shall form part of the record and it shall serve as the best evidence to determine whether a motion for reconsideration or appeal has been perfected within the reglementary period.

- In case the penalty imposed is dismissal from the police service, it shall be implemented immediately regardless of whether the respondent has perfected a motion for reconsideration or appeal. Other penalties, like demotion or suspension, shall only be implemented upon the finality of the decision or denial of the motion for reconsideration.

- Motions for reconsideration shall be forwarded to the DPRM, the RPHRDD or its equivalent office in the NSU for appropriate action. The DPRM, RPHRDD or its equivalent office in the NSU could, on their own, resolve the motion or endorse the same to the designated SHO for resolution. Thereafter, the resolution shall be referred to the Disciplinary Authority who rendered the decision, along with the records of the case, for consideration. The parties concerned shall be furnished with authenticated copies of the resolution personally or by registered mail.

- Appeals from decisions of PNP Disciplinary Authorities where the penalty imposed are dismissal from the police service or one (1) rank demotion shall be filed with the NAPOLCOM Appellate Board, i.e., National Appellate Board in case the decision appealed from was rendered by the Chief, PNP or Regional Appellate Board in case the decision was rendered by RD, PRO or D, NSU, within ten (10) days from receipt of a copy of the decision by filing a notice of appeal with the Disciplinary Authority who rendered the decision.

- In the event that an appeal has been filed on time, the DPRM, RPHRDD or its equivalent office in the NSU, as the case may be, shall immediately transmit the complete records of the case to the NAPOLCOM, appellate board. In case the appeal was not filed within the period adverted to above, the complete records of the case shall still be transmitted with the information that the appeal was filed late as shown in the proof of service.

- Implementing orders of decisions issued by the DPRM, RPHRDD or its equivalent office in the NSU shall be widely disseminated by furnishing the following offices with a copy thereof: DIDM, LS, Finance Service, Computer Service and the respondent's unit assignment. In case the RD, PRO or D, NSU is the Disciplinary

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Authority, the DPRM and the offices herein mentioned shall also be furnished with a copy of the implementing order for record purposes.

- It shall be the responsibility of the chief of office or unit where the respondent is assigned to see to it that the sanction imposed is immediately carried out upon receipt of the implementing order. In case of dismissal, the issued FA, badge and other equipment for which the respondent is accountable must be recalled immediately. Payment of salary to the respondent thru ATM or the printing of the continuous form check (CFC) shall be stopped. In case of suspension, no payment of salary and allowances shall be made during the period that the respondent is suspended or, in case the salary is being paid thru CFC, the CFC shall be cancelled during the period of suspension.

VI. Functions:

- The DIDM or RADIN or its equivalent office in the NSU shall:

- Conduct preliminary investigation on complaints and official reports filed against PNP uniformed personnel.

- Prepare report of preliminary investigation and submit same to the Disciplinary Authority concerned for consideration in case the recommendation is to drop and close the complaint or report for lack of probable cause.

- Approve the report of preliminary investigation in case probable cause warrants the conduct of a formal investigation and, thereafter, transmit the complete records of the case to the DPRM.

- Serve as the central monitoring office in the PNP with regard to the administrative cases of PNP personnel. To effectively and efficiently perform this function, it shall issue the appropriate implementing regulations for guidance and compliance of all concerned.

- Perform other functions as required.

- The NHQ or PRO Legal Service or Legal Officer, NSU shall:

- Act on referrals made by the DPRM or RPHRDD or its equivalent office in the NSU regarding the draft decisions prepared by the designated SHOs only on matters involving the applications of laws, rules and regulations.

- Act on referrals or instructions made by the members of the Command Group or the Disciplinary Authority concerned.

- Perform other functions as required.

- The DPRM or RPHRDD or its equivalent office in the NSU shall:

- Maintain a pool of qualified SHO, designate, SHO who shall conduct summary hearing, and issue the appropriate orders for such purpose.

- Monitor the progress of summary hearings and if warranted, call the attention of the SHO concerned for the resolution of cases within the reglementary period for such purpose.

- Transmit the report of summary hearing to the Disciplinary Authority concerned, along with the complete records of the case. As seen appropriate, refer the case to the Legal Service for appropriate action on the proposed decision.

- Serve as the repository of records and implementer of decisions rendered by the Disciplinary Authority. In case of appeals, transmit the complete records to the NAPOLCOM appellate board.

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- Resolve motions for reconsideration and submit recommendations to the Disciplinary Authority or endorse the motion to the designated SHO for appropriate action.

- Furnish the office concerned with copy of the order implementing the decision and require these offices to submit report of action taken on the said order.

- Perform other functions as required.

VII. Guidelines:

- Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives [Section 1, Article XI, 1987 Constitution]. This constitutional mandate should always be in the minds of all public servants to guide them in their actions during their entire tenure in the government service [Arce vs. Arce, Adm. Matter No. P-89-312, 9 January 1992].

- The good of the service and the degree of morality which every official and employee in the public service must observe, if respect and confidence are to be maintained by the Government in the enforcement of the law demand that no untoward conduct on his part, affecting morality, integrity and efficiency, while holding office should be left without proper and commensurate sanction, all attendant circumstances taken into account [Soriano vs. Quintos, 133 SCRA 215].

- An administrative complaint against public officers or employees cannot be just with- drawn at any time by the simple expediency of the complainant suddenly claiming a change of mind [Nones vs. Ormita, 390 SCRA 519]. Public interest and the need to maintain the faith and confidence of our people in the Government and its agencies and instrumentalities demand then that proceedings in administrative cases against public officials and employees should not be made to depend on the whims and caprices of complaints. In a real sense, the complainants in administrative cases are just witnesses. Therefore, regardless of their motion to dismiss or to withdraw the complaints, the proceedings thereon may continue [Estrada vs. Mejia, Adm. Matter P-92-610, 17 June 1992].

- Long-ingrained in our jurisprudence is the rule that the dismissal of a criminal case against an accused who is a respondent in an administrative case on the ground of insufficiency of evidence does not foreclose the administrative proceeding against him or give him a clean bill of health in all respects. In dismissing the case, the court is simply saying that the prosecution was unable to prove the guilt of the respondent beyond reasonable doubt, a condition sine qua non for conviction because of the presumption of innocence which the Constitution guarantees [Mollaneda vs. Umacob, 358 SCRA 551].

- The subsequent acquittal of said respondents in the criminal case per the trial court's order was of no consequence since such acquittal merely relieved them from criminal liability but in no way carried with it relief from the administrative liability of dismissal from the service under the final order of the police commission in the administrative case [Commission vs. Lood, 96 SCRA 819].

- Notice and opportunity to be heard must be accorded an employee even though he does not affirmatively demands them [Century Textiles Mills, Inc. vs. NLRC, 161 SCRA 528]. To be heard does not only mean verbal arguments in court. Where a party was given the opportunity to be heard, either through oral arguments or pleadings, there can be no denial of procedural due process. Due process is not simper it ubique judicial process [Yap Say vs. IAC, 159 SCRA 325].

- Notice to enable the other party to be heard and to present evidence is not a mere technicality or a trivial matter in any administrative and judicial proceedings, the service of summons is a very vital and indispensable

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ingredients of due process [National Power Corporation vs. NLRC, 272 SCRA 704].

- The circumstance that the chance to be heard is not availed of does not disparage that opportunity and deprive the person of the right to due process. Due process is not violated where a person is not heard because he has chosen, for whatever reason, not to be heard. It should be obvious that if he opts to be silent where he has a right to speak, he cannot later be heard to complain that he was unduly silenced [Pepsi Cola vs. NLRC, 247 SCRA 394].

- The right to counsel is not always imperative in administrative investigations because such inquiries are conducted merely to determine whether there are facts that merit disciplinary measure against erring public officers and employees with the purpose of maintaining the dignity of government service. As such, the hearing conducted by the investigating authority is not part of a criminal prosecution [Remolona vs. CSC, 362 SCA 312].

VIII. Repealing Clause:

All PNP issuances which are contrary to or inconsistent with this Circular are hereby amended or repealed accordingly.

IX. Effectivity:

This Circular takes effect fifteen (15) days from the date of filing with a copy thereof with the University of the Philippines Law Center pursuant to Sections 3 and 4 of Chapter 2, Book VII of EO No. 292, otherwise known as the Administrative Code of 1987.

Adopted: 03 March 2007

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