RULES AND PROCEDURES OF THE BOARD OF FOREIGN SERVICE ADMINISTRATION

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

WHEREAS, Section 87 of said Philippine Foreign Service Act of 1991 empowers the Secretary of Foreign Affairs to issue such rules and regulations as may be necessary to implement the provisions of the Philippine Foreign Service Act as well as the provisions of acts, decrees, and orders which are not inconsistent with it;

WHEREAS, the existing rules and regulations of the Board of Foreign Service Administration embodied in Chapter I, Part C, Section 18 (Board of Foreign Service Administration) and Chapter V (Administrative Investigations) of D.O. 19A - 1995, entitled "Regulations of the Department of Foreign Affairs" need to be updated and revised to make them more responsive to the demands of the administration of the foreign service;

WHEREAS, pertinent provisions of D.O. No. 31-97, entitled " Revised DFA Merit Promotion Plan," and Civil Service Commission Resolution No. 991936 entitled "Revised Uniform Rules on Administrative Cases in the Civil Service," need to be incorporated to the existing rules and regulations of the Board of Foreign Service Administration;

NOW, THEREFORE, the following shall be the rules and procedures for the Board of Foreign Administration

Rule 1. General Provisions

SECTION 1. Title - These Rules shall be known as the Rules and Procedures of the BFSA.

SECTION 2. Coverage - These Rules shall apply to all officers and employees of the Department of Foreign Affairs 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 or the Secretary of Foreign Affairs. These Rules shall have suppletory application to the personnel of attached agencies of the Department of Foreign Affairs in the Home Office and personnel of attached services in the Foreign Service Posts.

However, with respect to locally-hired or alien employees, the head of post concerned may separate them from the Service at any time for any cause he may deem sufficient for the purpose, in accordance with local laws and regulations on the matter; and honorary consuls may be separated from the Service by the Secretary at any time and for any cause he may deem sufficient for the purpose.

SECTION 3. Definition of Terms - The terms hereunder shall be construed as follows:

a. "Department" shall mean the Department of Foreign Affairs;
b. "President" shall mean the President of the Philippines;
c. " Secretary" shall mean the Secretary of Foreign Affairs;
d. "Board" shall mean the Board of Foreign Service Administration;

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e. "OPAS" shall mean the Office of Personnel and Administrative Services;
f. "OLA" shall mean the Office of Legal Affairs;
g. "Disciplining Authority" shall refer to the President for all officers with the rank of Foreign Service Officer, Class IV, and higher; and to the Secretary for all other personnel referred to in Section 2, Rule I;
h. "Appointing Authority" shall refer to the President for all officers with the rank of Foreign Service Officer, Class IV, and higher; and to the Secretary for all other personnel referred to in Section 2, Rule I;
i. "Respondent" shall refer to the person who is formally charged by the disciplining authority;
j. "Person complained of " shall refer to the person who is the subject of a complaint but who is not as yet formally charged by the Board;
k. "Party adversely affected" shall refer to the respondent against whom a decision in a disciplinary case has been rendered;
l. "Forum Shopping" shall refer to the filing of an administrative action or complaint before another agency or any tribunal against the same party and involving the same acts or causes of action and relief;
m. "FSO" shall mean Foreign Service Officer;
n. "FSSO" shall mean Foreign Service Staff Officer;
o. "FSSE" shall mean the Foreign Service Staff Employee"
p. "CSC" shall mean the Civil Service Commission;
q. "Service" shall mean the Foreign Service of the Philippines, which includes all officers and employees of the Department in the Home Office, the Regional Consular Offices, and the Foreign Service Posts; and
r. "Frozen" or "floating" shall mean the act by the Department of not giving any specific assignment or duties to its officer or staff personnel.

SECTION 4. Composition - The Board of Foreign Service Administration shall be composed of the Undersecretary of Foreign Affairs for Administration as Chairperson, with all other Department Undersecretaries, Assistant Secretaries of the principal offices in the Department, and the Director of the Foreign Service Institute as Members.

The Chairperson of the Board may invite other officials of the Department to any Board meeting as may be deemed necessary. Said officials will not be entitled to voting rights or any other privileges accorded to regular members of the Board.

SECTION 5. Functions - the Board shall:

1. Make recommendations to the Secretary concerning:

a. the functions and operations of the Service;

b. the policies and procedures to govern the selection, assignment, promotion, discipline, and separation from the Service of chiefs of mission, career ministers, foreign service officers, foreign service staff officers, foreign service staff employees, casuals, contractuals, and other personnel of the Department, and

c. the policies to govern the administrative, personnel, and fiscal management of the Service;

2. Establish the standards of efficiency of service personnel;

3. Deliberate and act on administrative cases brought against officers and employees who are charged with committing offenses against the interest of public service and submit to the Secretary its findings and recommendations; and

4. Perform such other duties as may be assigned to it by law or regulation, including those that may be issued by the Secretary.

SECTION 6. Board Secretariat - All administrative matters pertaining to the operations and processes of the

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Board shall be undertaken by a Board Secretariat composed of a Board Secretary, an Assistant Board Secretary, and Board Secretariat staff members.

The Board Secretary should be a lawyer with at least the rank of Foreign Service Officer, Class IV.

SECTION 7. Meetings - The Board shall hold regular meetings once a month on a day to be fixed by its members. In the absence of a quorum on the fixed day, the Chairperson may reschedule that regular meeting on the next convenient day where a quorum could be established.

The Chairperson may call for a Special Board Meeting whenever required by the exigencies of the service or upon the submission of a written request by 1/4 (one-fourth) of the members of the Board.

SECTION 8. Agenda - The agenda and other necessary documents for each Board meeting, whether regular or special, shall be forwarded by the Board Secretariat to the members not later than three (3) working days before the meeting.

Any member of the Board may submit or suggest in writing a topic for discussion by the Board to be included in the agenda of the meeting. Such written suggestion should be received by the Board Secretariat at least four (4) working days before the scheduled meeting.

The Chairperson of the Board shall approve the items for inclusion in the agenda, on the basis of their merit and urgency.

SECTION 9. Quorum - The presence of a simple majority (fifty percent plus one) of all of the members of the Board shall constitute a quorum to transact its business.

The presence of a quorum shall be determined before the commencement of each Board Meeting. Once a quorum has been declared, the meeting may commence and proceed regardless of whether or not the quorum is maintained throughout the meeting.

SECTION 10. Voting - The Board should, as much as possible, arrive at its decisions by consensus.

The Chairperson, however, may call for a division of the house whenever a consensus cannot be reached and the matter shall be decided with the concurrence of a simple majority of the members listed present. The Chairperson shall vote only to break a tie.

In administrative cases, a decision or recommendation for dismissal from the Service or suspension of an officer or employee shall require the concurrence of at least a simple majority of all the members listed present.

In matters other than administrative cases brought before the Board, including appointment, re-appointment, lateral entry, or promotion to the next higher rank of FSOs, such decisions or recommendations shall require the concurrence of at least a simple majority of all the members listed present.

In case a Board member is unable to attend a Board Meeting, the duly designated Acting Assistant Secretary from his office shall vote for and in behalf of the Assistant Secretary. In the absence of a designated Acting Assistant Secretary, the member may be represented by other FSOs who shall not be entitled to vote but shall be allowed to participate in the discussions.

SECTION 11. Manner of Voting - For deliberations on all cases, whether disciplinary or non-disciplinary, voting shall be viva voce, except if, upon the request of at least a majority of the members of the Board present, voting shall be done by secret ballot. A member may put on record an explanation for his or her vote.

SECTION 12. Deliberations of the Board, Confidential - All deliberations of the Board and the records of its

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proceedings shall be confidential, unless otherwise decided by the Chairperson or a majority of the members of the Board. The deliberations shall be recorded in shorthand, stenotype or any other means of recording. A transcript of the records, duly certified as correct by the recording officer, shall be considered prima facie record of the proceedings.

SECTION 13. Prohibitions - No member of the Board, while acting as such, shall intervene in any way, directly or indirectly, in Board deliberations affecting himself or any relative of his within the fourth civil degree of consanguinity or affinity.

SECTION 14. Decisions and Recommendations - The recommendations of the Board shall be submitted to the Secretary in writing by the Chairman. All decisions of the Board shall be in the form of Board Resolutions.

Rule II. Promotion

SECTION 15. Promotion - The Board shall recommend to the Secretary the promotions of chiefs of mission, career ministers, and foreign service officers on the basis of such criteria to be adopted by the Board or guidelines provided by existing regulations.

SECTION 16. Notice of Promotion - For purposes of transparency, the Board shall publish, within a reasonable period prior to the promotion proceedings, a notice in the Home Office, Foreign Service Posts, and Regional Consular Offices containing the following:

a. schedule of promotion proceedings; and
b. names of those eligible for promotion, arranged by batch.

The notice shall include a statement giving candidates the option to submit their updated curriculum vitae (including accomplishments and other relevant information which have bearing on their promotion).

SECTION 17. Manner of Voting - The manner of voting for promotions shall be by secret ballot, unless the Board, by a vote of a simple majority of all the members present, decides otherwise.

SECTION 18. Prohibition - A member of the Board, while acting as such, shall not intervene in any way, directly or indirectly, in Board deliberations and shall not be eligible to vote for promotions affecting himself or any relative of his within the fourth civil degree of consanguinity or affinity.

Rule III. Disciplinary Cases

SECTION 19. Disciplinary Actions - In the investigation of administrative cases against officers and employees of the Department, the rules embodied in this Department Order shall be strictly observed.

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.

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

1. The President for all presidential appointees of the Department, upon recommendation of the Secretary; and

2. The Secretary for all those appointed by him or by his predecessors.

However, the chiefs of mission who are commissioned by the President as ambassadors extraordinary and plenipotentiary shall not be investigated by the Board or separated from the Service unless there is an express written directive from the President.

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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.

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 an assignment, duties, or functions appropriate to his rank and position, except for justifiable reasons.

SECTION 20. Technical Rules in Administrative Investigations - The rules in administrative investigations shall be conducted without necessarily adhering strictly to the technical rules of procedure and evidence applicable to judicial proceedings.

SECTION 21. Filing - Any affidavits, counter-affidavits, motions, petitions, appeals, or other pleadings required to be filed under this Department Order may be done so personally, by registered mail, or, if the person required to file is assigned abroad, through the diplomatic pouch. 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; on the date of mailing, as shown by the post office stamp on the envelope or the registry receipt; or on the date submitted to the person in charge at Post concerned for inclusion in the pouch list, if filed via diplomatic pouch.

SECTION 22. Service - Any decisions, orders, and notices 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 in charge at Post to open the diplomatic pouch, if served through the diplomatic pouch.

SECTION 23. Initiation of Proceedings - Administrative proceedings may be initiated by the Secretary motu proprio or upon complaint by any person. The complaint shall be filed with either the Office of the Secretary, OPAS, or the Board Secretariat. If the complaint is filed with the Office of the Secretary, the latter shall endorse the same to OPAS for appropriate action.

SECTION 24. Form of Complaints - A complaint filed by any person against an officer or employee shall not be given due course, unless the complaint is in writing and subscribed and sworn to by the complainant. However, in cases initiated by the Secretary, the complaint need not be under oath.

The complaint shall contain the following:

a. the full name and address of the complainant;
b. the full name and address of the person complained of, as well as his position and office of employment;
c. a narration of the relevant and material facts which shows the acts or omissions allegedly committed by the officer or employee;
d. certified true copies of documentary evidence and affidavits of his witnesses, if any; and
e. 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 five (5) days from receipt of such notification, otherwise the complaint shall be dismissed.

No anonymous complaint shall be entertained.

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 and to enable him to

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intelligently prepare his answer.

SECTION 25. 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 documentary or object evidence that would tend to establish a prima facie case against the person complained of, the same should be given due course.

SECTION 26. 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. If the complaint is sufficient in form and substance, OPAS shall transmit the complaint and its supporting documents to the Board Secretariat. In the event the complaint is filed directly with the Board Secretariat, the latter shall perform the duty required of OPAS if the complaint is filed with that office.

Upon receipt of the complaint and its supporting documents, the Board Secretariat shall notify the person complained of in writing to submit a Counter-Affidavit or Comment under oath within five (5) days from receipt of the said notice. A copy of the complaint shall be attached to the notification. Failure of the person complained of to submit his Counter-Affidavit or Comment within the prescribed period shall be considered as a waiver of his right to do so.

SECTION 27. Preliminary Investigation - Within five (5) days from receipt of the Counter-Affidavit or Comment under oath, the Board Secretariat shall conduct a Preliminary Investigation for the purpose of determining whether a prima facie case exists to warrant the issuance of a formal charge. A preliminary investigation involves the ex parte examination of records and documents submitted by the complainant and the person complained of.

SECTION 28. Duration of the Investigation - A preliminary investigation shall commence not later than five (5) days from receipt of the Comment or Counter-Affidavit by the Board Secretariat and shall be terminated within thirty (30) days thereafter. However, this may be extended by the Board ad referendum for meritorious reasons.

SECTION 29. Preliminary Investigation Report -

a. Within five (5) days from the termination of the preliminary investigation, the Board Secretariat shall submit the Preliminary Investigation Report and the complete records of the case to the Board for its review.

b. On the next regular or special meeting of the Board after the Board Secretariat submits its Preliminary Investigation Report, the Board shall deliberate and render a decision on the recommendation of the Board Secretariat.

c. If the Board determines that a prima facie case is established during the preliminary investigation, the Board shall request OLA to prepare the Formal Charge for the signature of the Secretary. The Formal Charge, duly signed, shall be served to the respondent by the Board Secretariat

d. In the absence of a prima facie case, the complaint shall be dismissed by the Board during that meeting. The complainant and the person complained of shall both be notified in writing of the dismissal.

SECTION 30. Formal Charge - The formal charge shall contain a specification of charge(s), a brief statement of material or relevant facts, accompanied by certified true copies of the documentary evidence, if any, sworn statements covering the testimony of witnesses, a directive to answer the charge(s) in writing under oath within fifteen (15) days from receipt thereof, an advice for the respondent to indicate in his answer whether or not he elects a formal investigation of the charge(s), and a notice that he is entitled to be assisted by a counsel of his choice.

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OLA shall prosecute the case on behalf of the Department. The counsel for private complainant, if any, may prosecute the case under the direct supervision and control of OLA.

If the respondent has submitted his Comment and Counter-Affidavit during the preliminary investigation, he shall be given the opportunity to submit additional evidence.

The Board shall not entertain requests for clarification, bills of particulars, or motions to dismiss which are obviously designed to delay the administrative 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.

SECTION 31. Answer - The answer, which is in writing and under oath, shall be specific and shall contain material facts and applicable laws, if any, including documentary evidence, sworn statements covering testimonies of witnesses, if there be any, in support of his case. It shall also include a statement indicating whether or not he elects a formal investigation.

SECTION 32. Failure to File an Answer - If the respondent fails or refuses to file an answer to the Formal Charge within fifteen (15) days from receipt thereof, he shall be considered to have waived his right thereto and formal investigation may commence.

SECTION 33. Preventive Suspension - Upon petition of the complainant or motu propio, 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 authority pending an investigation, if the charge involves:

a. dishonesty;
b. 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 removal from the Service.

An order of preventive suspension may be issued to temporarily remove the respondent from the scene of his alleged misfeasance or malfeasance and to preclude the possibility of exerting undue influence or pressure on the witnesses against him or tampering of documentary evidence on file with his Office. In lieu of preventive suspension, 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 formal hearings.

SECTION 34. 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 preventive suspension, unless otherwise provided by special law, he 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 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 35. 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 Motion for Reconsideration shall not stay the execution of the order of preventive suspension.

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Should the Motion for Reconsideration be granted, the respondent shall be entitled to automatic reinstatement without loss of seniority rights and to all the salaries and benefits due him during the duration of the nullified order of preventive suspension.

The order of preventive suspension issued by the Secretary may be elevated to the CSC by way of an appeal within fifteen (15) days from receipt of the order of preventive suspension.

SECTION 36. Conduct of Formal Investigation - Although the respondent does not request a formal investigation, one shall nevertheless be conducted by the Board where from the allegations of the complaint and the answer of the respondent, including the supporting documents of both parties, the merits of the case cannot be decided judiciously without conducting such investigation.

The investigation shall be held not earlier than fifteen (15) days not later than thirty (30) days from the date the Board has appointed a Hearing Officer or a Special Investigating Committee. If the respondent is assigned abroad, the testimony of witnesses may be received by the Hearing Officer or Special Investigating Committee through deposition on written interrogatories and cross-interrogatories. The formal investigation shall be concluded within ninety (90) days from its commencement or immediately thereafter.

For this purpose, the Board shall appoint a Hearing Officer or a Special Investigating Committee composed of at least three (3) Department personnel. The Hearing Officer or at least one of the members of the Special Investigating Committee shall be a member of the Bar.

SECTION 37. Pre-Hearing Conference - At the commencement of the formal investigation, the Hearing Officer or the Special Investigating Committee, as the case may be, may conduct a pre-hearing conference for the parties to appear, consider, and agree on any of the following:

- stipulation of facts;
- simplification of issues;
- identification and marking of evidence of the parties;
- waiver of objections to admissibility of evidence;
- limiting the number of witnesses, and their names;
- dates of subsequent hearings; and
- 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.

The Hearing Officer or the Special Investigating Committee, as the case may be, shall inform the respondent of his right to counsel.

SECTION 38. Continuous Hearing Until Terminated; Postponement - Hearings shall be conducted on the hearing dates set by the Hearing Officer or the Special Committee as agreed upon during the pre-hearing conference.

Where 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.

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A party shall be granted only three (3) 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 39. Preliminary Matters - At the start of the hearing, the Hearing Officer or the Special Investigating Committee 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 a counsel, he shall be deemed to have waived his right thereto.

Before taking the testimony of a witness, the Hearing Officer or the Special Investigating Committee shall place him under oath and then take his name, address, civil status, age, and place of employment.

A sworn statement of a witness properly identified and affirmed shall constitute his direct testimony, copy furnished the other party.

SECTION 40. Appearance of Counsel - Any legal counsel appearing before the Hearing Officer or Special Investigating Committee shall manifest orally or in writing his appearance for either the respondent or complainant, stating his full name, Roll number, IBP receipt number, and exact address where he 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 41. Order of Hearing - Unless the Hearing Officer or the Special Investigating Committee directs otherwise, the order of hearing may be as follows:

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

When the presentation of evidence has been conducted, the parties shall formally offer their evidence either orally or in writing and thereafter objections thereto may also be made either orally or in writing. After which both parties may be given time to submit their respective memorandum, which in no case shall be beyond five (5) days after the termination of the investigation. Failure to submit the same within the given period shall be considered a waiver thereof.

SECTION 42. Objections - All objections raised during the hearing shall be resolved by the Hearing Officer or the Special Investigating Committee.

The Hearing Officer or the Special Investigating Committee shall accept all evidence deemed material and relevant to the case. In case of doubt, he shall allow the admission of evidence subject to the objection interposed against its admission.

SECTION 43. 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 the respondent. These shall form part of the complete records of the case.

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SECTION 44. 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.

SECTION 45. Issuance of Subpoena -The Hearing Officer or the Special Investigating Committee may issue subpoena ad testificandum to compel the attendance of witnesses and subpoena duces tecum for the production of document or things.

SECTION 46. Records of Proceedings - Records of the proceedings during the formal investigation may be taken in shorthand or stenotype or any other means of recording. A transcript of the records, duly certified as correct by the recording officer, shall be considered prima facie record of the testimony and proceedings.

SECTION 47. Effect of the Pendency of an Administrative Case - Pendency of an administrative case shall not disqualify respondent for promotion or from claiming maternity or paternity benefits. For this purpose, an officer or employee is subject of a pending administrative case when the Board has issued a formal charge against him.

SECTION 48. Formal Investigation Report - Within thirty (30) days after the conclusion of the formal investigation, a report containing a narration of the material facts established during the investigation, the findings and the evidence supporting said findings, as well as the recommendations, shall be submitted by the Hearing Officer or the Special Investigating Committee to the Board. The complete records of the case shall be attached to the Report of Formal Investigation.

If no formal investigation has been conducted, the Hearing Officer or the Special Investigating Committee shall nevertheless submit a report and a recommendation to the Board within fifteen (15) days from receipt of the Answer, based on the records and evidence submitted to it.

The complete records shall be systematically and chronologically arranged, paged, and securely bound to prevent loss. A table of contents shall be prepared. Whoever is in-charge of the transmittal of the complete records shall be held responsible for any loss or suppression of pages thereof.

On the next regular or special meeting of the Board after the receipt of the Report of Formal Investigation, the Board shall deliberate on the same and render a decision on the recommendation of the Hearing Officer or the Special Investigating Committee.

SECTION 49. When Case is Decided -

1. CASES CONCERNING OFFICERS WITH THE RANK OF FSO, CLASS IV, AND HIGHER:

The Board shall submit a recommendation to the Secretary on the case within five (5) days from the regular or special meeting when the decision on the recommendation of the Hearing Officer or Special Investigating Committee was rendered. The recommendation of the Board shall include the entire records of the case as well as a draft recommendation to the President. In turn, the Secretary shall submit a recommendation to the President within fifteen (15) days from receipt of the recommendation of the Board. The President shall render his decision on the case. The applicable rules, regulations, and guidelines of the Office of the President shall be strictly observed.

2. CASES CONCERNING OTHER PERSONNEL

The Board shall submit a recommendation to the Secretary within five (5) days from the regular or special meeting when the decision on the recommendation of the Hearing Officer or the Special Investigating Committee was rendered. The recommendation of the Board shall include the entire records of the case as well as a draft

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decision for consideration of the Secretary. The Secretary shall render his decision on the case within thirty (30) days from receipt of the recommendation of the Board.

SECTION 50. Finality of Decisions - A decision rendered by the disciplining authority shall be final and executory fifteen (15) days after its receipt by the party adversely affected and no motion for reconsideration has been filed.

Rule III. Remedies

SECTION 51. Filing of Motion for Reconsideration - Any party to the case may file a motion for reconsideration with the disciplining authority who rendered the decision within fifteen (15) days from receipt thereof.

SECTION 52. Grounds for Motion for Reconsideration - The motion for reconsideration shall be based on any of the following:

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 prejudicial to the interest of the movant.

SECTION 53. Limitation - Only one motion for reconsideration shall be entertained.

SECTION 54. Effect of Filing of Motion - 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.

SECTION 55. Filing of Appeals with the Civil Service Commission - Decisions rendered by the Secretary may be appealed to the 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 submit the records of the case, which shall be systematically and chronologically arranged, paged, and securely bound to prevent loss, with its comment, within fifteen (15) days, to the CSC. The applicable rules, regulations, and guidelines promulgated by the CSC shall be strictly observed.

SECTION 56. 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 Board, 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 Rule II 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 shall be immediately reinstated without loss of seniority rights, salaries, and benefits.

SECTION 57. Appeal with the Court of Appeals - Decisions rendered by the President and the CSC shall be appealed to the Court of Appeals under Rule 43 of the 1997 Rules of Court.

SECTION 58. Effect on Filing an Appeal - An appeal shall not stay the execution of the decision, and in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal, in the event he wins the appeal.

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SECTION 59. Recommendation for and 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 resides to the effect that he has become a useful member thereof;
c. proof of non-pendency on an appeal/petition for review relative to his disciplinary case before any court/tribunal; and
d. if the petition is filed with the CSC, other requirements provided by its rules and regulations.

Rule V. Penalties

SECTION 60. 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 their corresponding penalties:

1. Dishonesty

1st offense - Dismissal

2. Gross neglect of duty

1st offense - Dismissal

3. Grave misconduct

1st offense - Dismissal

4. Being notoriously undesirable

1st offense - Dismissal

5. Conviction of a crime involving moral turpitude

1st offense - Dismissal

6. Falsification of official document

1st offense - Dismissal

7. Physical or mental incapacity or disability due to moral or vicious habits

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 his 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. Contracting loans of money or other property from persons with whom the office of the employee has business relations

1st offense - Dismissal

11. Soliciting or accepting directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value which in the course of his official duties or in connection with any operation being regulated by or any transaction which may be affected by the functions of his office. The propriety or impropriety of the foregoing shall be determined by its value, kinship or relationship between giver and receiver, and the motivation. A thing of monetary value is one which is evidently or manifestly excessive by its very nature.

1st offense - Dismissal

12. Nepotism

1st offense - Dismissal

13. Disloyalty to the Republic of the Philippines and to the Filipino People

1st offense - Dismissal

14. Oppression

1st offense - Suspension (6 months, 1 day to 1 year)

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2nd offense - Dismissal

15. Disgraceful and immoral conduct

1st offense - Suspension (6 months, 1 day to 1 year)

2nd offense - Dismissal

16. I nefficiency and incompetence in the performance of official duties

1st offense - Suspension (6 months, 1 day to 1 year)

2nd offense - Dismissal

17. Frequent unauthorized absences, or tardiness in reporting for duty, loafing or fre- quent unauthorized absences from duty during regular office hours

1st offense - Suspension (6 months, 1 day to 1 year)

2nd offense - Dismissal

18. Refusal to perform official duty

1st offense - Suspension (6 months, 1 day to 1 year)

2nd offense - Dismissal

19. Gross insubordination

1st offense - Suspension (6 months, 1 day to 1 year)

2nd offense - Dismissal

20. Conduct prejudicial to the best interest of the Service

1st offense - Suspension (6 months, 1 day to 1 year)

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2nd offense - Dismissal

21. Directly or indirectly having financial and material interest in any transaction requiring the approval of his 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, con- sultant, counsel, broker, agent, trustee, or nominee in any private enterprise regulated, supervised, or licensed by his 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 to him by reason of his office and not made available to the public, to further his private interests or give undue advantage to anyone or 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 Stan- dards 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 his office, unless such recommendation or referral is mandated by (1) law, (2) international agreement, commitment and obligation, or (3) as part of the function of his office

1st offense - Suspension (6 months, 1 day to 1 year)

2nd offense - Dismissal

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26. Gross violation of Civil Service Laws, Foreign Service laws and reasonable Depart- ment rules and regulations

1st offense - Suspension (6 months, 1 day to 1 year)

2nd offense - Dismissal

27. Refusal of Assignment or Recall Order

1st offense - Suspension (6 months, 1 day to 1 year)

2nd offense - Dismissal

28. "Unsatisfactory" rating for three (3) consecutive years

1st offense - Suspension (6 months, 1 day to 1 year)

2nd offense - Dismissal

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

1. Simple neglect of duty

1st offense - Suspension (1 month, 1 day to 6 months)

2nd offense - Dismissal

2. Simple misconduct

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 the Foreign Service Act, existing Civil Service Law, and rules of serious nature

1st offense - Suspension (1 month, 1 day to 6 months)

2nd offense - Dismissal

5. Insurbordination

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 disclosure of business interest and financial connections including those of their spouses and unmar- ried 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 his position in the private business enterprise within thirty (30) days from assumption of public office when conflict of interest arises, and/or failure to divest himself of his 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

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official or employee must either resign or divest himself 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. Violation of reasonable office rules and regulations

1st offense - Reprimand

2nd offense - Suspension (1 to 30 days)

3rd offense - Dismissal

4. Frequent unauthorized tardiness (habitual tardiness)

1st offense - Reprimand

2nd offense - Suspension (1 to 30 days)

3rd offense - Dismissal

5. Gambling prohibited by law

1st offense - Reprimand

2nd offense - Suspension (1 to 30 days)

3rd offense - Dismissal

6. Refusal to render overtime service

1st offense - Reprimand

2nd offense - Suspension (1 to 30 days)

3rd offense - Dismissal

7. Disgraceful, immoral, or dishonest conduct prior to entering the Service

1st offense - Reprimand

2nd offense - Suspension (1 to 30 days)

3rd offense - Dismissal

8. Borrowing money by superior officers from subordinates

1st offense - Reprimand

2nd offense - Suspension (1 to 30 days)

3rd offense - Dismissal

9. Willfull failure to pay just debts or willfull failure to pay taxes due to the government

1st offense - Reprimand

2nd offense - Suspension (1 to 30 days)

3rd offense - Dismissal

The term "just debts" shall apply only to:

1. Claims adjudicated by a court of law; or

2. Claims the existence and justness of which are admitted by the debtor

10. 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

11. Promoting the sale of tickets in 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

12. Failure to act promptly on letter and request within fifteen (15) days from receipt 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 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

14. Failure to attend to anyone who wants to avail himself of the services of the office or act promptly and expeditiously on public transactions

1st offense – Reprimand

2nd offense – Suspension (1 to 30 days)

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3rd offense – Dismissal

15.Engaging in the private practice of his profession unless authorized by the Constitution, law or regulation: Provided that such practice will not conflict with his official functions

1st offense – Reprimand

2nd offense – Suspension (1 to 30 days)

3rd offense – Dismissal

16. 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

SECTION 61. Mitigating, Aggravating or Alternative Circumstances – In the determination of the penalties to be imposed, mitigating, aggravating, and alternative circumstances attendant to the commission of the offense shall be considered.

The following circumstances shall be appreciated:

a. Physical illness;
b. Good faith;
c. taking undue advantage of official position;
d. taking undue advantage of subordinate;
e. undue disclosure of confidential information;
f. use of government property in the commission of the offense;
g. habituality;
h. offense is committed during office hours and within the premises of the office or building;
i. employment of fraudulent means to commit or conceal the offense;
j. length of service in the government,
k. education, or
l. other analogous circumstances.

In the appreciation of the aforementioned circumstances, the same must be invoked or pleaded by the proper party, otherwise, said circumstances shall not be considered in the imposition of the proper penalty. The investigating body, however, may, in the interest of substantial justice consider these circumstances.

SECTION 62. Manner of Imposition - When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:

a. The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are

present.
b. The medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present.
c. The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.
d. Where aggravating and mitigating circumstances are present, paragraph [a] shall be applied where there are more mitigating circumstances present; paragraph [b] shall be applied when the circumstances equally offset each other; and paragraph [c] shall be applied when there are more aggravating circumstances.

SECTION 63. Penalty for the Most Serious Offense - 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.

SECTION 64. Duration and Effect of Administrative Penalties - The following rules shall govern in the imposition of administrative penalties:

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.
b. The penalty of transfer shall carry with it the sanction that failure on the part of the respondent to seek transfer to another office within a period of not less than ninety (90) days, he shall be considered resigned. The penalty of transfer may be imposed with a condition that the respondent shall be barred from holding a position involving property or money responsibility.
c. 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.
d. The penalty of reprimand or censure shall not carry with it any accessory penalty nor result in the temporary cessation of work.

SECTION 65. Administrative Disabilities/Accessories to Administrative Penalties -

a. Cancellation of eligibility
b. Forfeiture of retirement benefits
c. Disqualification for reinstatement or reemployment
d. Disqualification for promotion
e. Bar from taking any Civil Service Examination

SECTION 66. Administrative Disabilities Inherent in Certain Penalties -

a. The penalty of dismissal shall carry with it that of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision.
b. The penalty of transfer shall carry with it disqualification for promotion for a period of six (6) months from the date respondent reports for the new position or to the new station.
c. The penalty of suspension shall carry with it disqualification for promotion corresponding to the period of suspension.
d. The penalty of fine shall carry with it disqualification for promotion for a period twice the number of days he was fined.
e. The penalty of fine shall be paid to the agency imposing the same, computed on the basis of respondent's salary at the time the decision becomes final and executory.
f. The penalty of reprimand shall not carry with it any of the accessory penalties.
g. A warning or admonition shall not be considered a penalty.

SECTION 67. Effect of Exoneration on Certain Penalties -

a. In case the penalty imposed is demotion, the exonerated employee shall be restored to his former position without loss of seniority rights and with payment of salary differentials.
b. In case the penalty imposed is transfer, he shall immediately be restored to his former post unless he decides otherwise; or, in the exigency of the service, such restoration is not economical, in which case he may be transferred to an equivalent post. In case there is demotion in rank, salary, or status, he shall be restored to his former rank, salary, or status.
c. In case the penalty imposed is suspension, he shall immediately be reinstated to his former post without loss of seniority rights and with payment of back salaries.
d. In case the penalty imposed is dismissal, he shall be immediately reinstated to his previous item without loss of seniority rights and with payment of back wages.

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

Rule VI. Miscellaneous Provisions

SECTION 68. Implementation of Decision - The decision of the Secretary or the President shall be immediately executory after fifteen (15) days from receipt thereof, unless a motion for reconsideration is seasonably filed, in which case the execution of the decision shall be held in abeyance.

SECTION 69. Implementation of Final Decisions - The Board shall monitor the immediate implementation of these decisions.

SECTION 70. Effect of Pendency of Appeal/Certiorari with Court - The filing and pendency of an appeal with the Court of Appeals or certiorari with the Supreme Court shall not stop the execution of the final decision of the Secretary or the President unless the Court issues a restraining order or an injunction.

SECTION 71. Non-Implementation of Decision - Any officer or employee who willfully refuses or fails to implement the final resolution, decision, order, or ruling of the President or the Secretary to the prejudice of the public service and the affected party, may be cited in contempt and administratively charged with conduct prejudicial to the best interest of the service or neglect of duty.

SECTION 72. Computation of Period - In computing any period of time prescribed by these Rules, the first day shall be excluded and the last day included unless it be a Saturday, a Sunday, or a legal holiday, in which case the period shall run until the end of the next working day which is neither a Saturday, a Sunday, nor a legal holiday.

Copies of decisions and other communications shall be served on counsel but receipt by either counsel or party shall be reckoned from the date of receipt of counsel or party, whichever is later.

SECTION 73. Effectivity - These Rules shall take effect after fifteen (15) days from the date of its deposit with the U.P. Law Center.

SECTION 74. Repealing Clause - Chapter I, Part C, Section 18 (Board of Foreign Service Administration) and Chapter V (Administrative Investigations) of D.O. 19A-1995, entitled "Regulations of the Department of Foreign Affair", and all other office memoranda, memorandum circulars, resolutions, rules, or regulations inconsistent with these Rules are hereby repealed or modified accordingly.

SECTION 75. Separability Clause - Should any provisions of this Department Order or the applicability thereof to any person or circumstance be held invalid, the remainder thereof shall not be affected thereby.

Adopted: 06 April 2004

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