

PROCEDURE GOVERNING THE INVESTIGATION OF ADMINISTRATIVE COMPLAINTS/CHARGES AGAINST PROSECUTORS IN THE NATIONAL PROSECUTION SERVICE

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In the interest of the service and pursuant to the provisions of Presidential Decree No. 1275 dated April 11, 1978 and other existing laws, the following procedure in the investigation of administrative charges against prosecutors in the National Prosecution Service is hereby established:

I. PRELIMINARY PROVISIONS

Section 1. Definition of Terms — As used herein, unless the context indicates otherwise —

- a. “Secretary” shall refer to the Secretary of the Department of Justice;
- b. “Prosecutor” shall refer to a State Prosecutor and the assistants of the Regional, City and Provincial Prosecutors;
- c. “Head Prosecutor” shall refer to the Chief State Prosecutor and his assistants and the head of a Regional, City or Provincial Prosecution Office;
- d. “Respondent” shall refer to the prosecutor/head prosecutor against whom an administrative complaint/charge has been filed; and
- e. “Complainant” shall refer to any person with a complaint against a prosecutor.

Sec. 2. Statement of Policy — This Circular seeks to establish a uniform procedure in the investigation of administrative charges filed against the members of the National Prosecution Service that will induce public confidence and ensure the fair, just and expeditious disposition/resolution thereof.

II. COMPLAINT

Sec. 3. Who May File a Complaint — A complaint may be filed against a prosecutor by the Secretary, the Head Prosecutor or by any other person who has personal knowledge of the facts constituting the offense.

Sec. 4. Where to File a Complaint — The complaint shall be filed directly with the Secretary if the respondent is a Head Prosecutor. If the respondent is a prosecutor, the complaint shall be filed with the Head Prosecutor of the prosecution office where the respondent belongs.

Sec. 5. Form of Complaint — A complaint shall be in writing, and signed by the complainant. If the complaint is filed by a private party, the same shall be placed under oath by the complainant.

Sec. 6. Contents of Complaint; Supporting Documents — A complaint shall contain the following information:

1. the full name and address of the complainant;
2. the full name, position and place of station of the respondent; and
3. a narration of the relevant and material facts showing the act or omission complained of.

Certified true copies of the documents and affidavits of witnesses, if any, which may substantiate the charge, shall be attached to the complaint.

Sec. 7. Offenses Which May Be the Subject of a Complaint — A respondent may be charged for violation of any of the following offenses:

a. Grave Offense

- i. Dishonesty;
- ii. Gross Neglect of Duty;
- iii. Grave Misconduct;
- iv. Disgraceful and immoral conduct;
- v. Being notoriously undesirable;
- vi. Requesting or receiving any fee, gift or other valuable item for himself or any other person in the course of official duties or in connection therewith when such fee, gift or other valuable thing is given by any person in hope or expectation of receiving a favor or better treatment than that accorded other persons or committing acts punishable under anti-graft law;
- vii. Conviction of a crime involving moral turpitude;
- viii. Physical or mental incapacity or disability due to immoral or vicious habits;
- ix. Contracting loans of money or other property from persons with whom the office of the prosecutor concerned has business relations;
- x. Engaging directly or indirectly in partisan political activities;
- xii. Conduct prejudicial to the best interest of the service
- xiii. Nepotism as defined in Section 59 of Chapter 7, title I, Book V, Executive Order No. 292 (The Administrative Code of 1987);
- xiv. Falsification of official document;
- xv. Disloyalty to the Republic of the Philippines and the Filipino people;
- xvi. 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 transaction may be affected by the functions of his office;
- xvii. Disclosing or misusing confidential 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;
- xviii. Obtaining or using any statement filed under R.A. No. 6713 (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 public;
- xix. Recommending any person to any position in a private enterprise which has a pending official transaction with his office, unless such recommendation or referral is mandated by law or international agreements, commitment or obligation or as part of the function of his office.

b. Less Grave Offense

- i. Discourtesy in the course of official duties;
- ii. Habitual drunkenness;
- iii. Gambling prohibited by law;
- iv. Oppression;
- v. Inefficiency and incompetence in the performance of official duties;
- vi. Improper or unauthorized solicitation of contributions from subordinate employees;
- vii. Insubordination or refusal to perform official duty;
- viii. Borrowing money by superior officers from subordinates or lending by subordinates to superior officers;
- ix. Lending money at usurious rates of interest;
- x. Violation of applicable provisions of existing Civil Service Law and Rules or reasonable office regulations;

- xi. Disgraceful, immoral, or dishonest conduct prior to entering the service;
- xii. Lobbying for personal interest or gain in legislative halls and offices without authority;
- xiii. Unfair discrimination in rendering public service due to party affiliation or preference;
- xiv. Failure to file sworn statement of assets and liabilities and net worth, and disclosure of business interest and financial connections, including those of his spouse and unmarried children under eighteen (18) years of age living in his household.

c. Light Offense

- i. Frequent unauthorized absences or tardiness in reporting for duty or frequent unauthorized absences from duty during regular hours;
- ii. Willful failure to pay taxes due to the government;
- iii. Willful failure to pay just debts;
- iv. Pursuit of private business, vocation or profession without the permission required by the Civil Service Rules and Regulations;
- v. Promoting the sale of tickets in behalf of private enterprise that are not intended for charitable or public welfare purposes and, even in the latter case, if there is no prior authority;
- vi. Failure to attend to anyone who wants to avail himself of the services of the office, or act promptly and expeditiously on public transactions.

Sec. 8. Action on Complaint — A complaint, including those that are not signed or in the prescribed form, shall be given due course if there is obvious truth or merit to the allegations therein or if the same is supported by documentary or other evidence. Otherwise, the complaint shall be dismissed.

III. FACT FINDING INVESTIGATION

Sec. 9. Show-Cause Order — The Secretary or the Head Prosecutor, as the case may be, shall furnish the respondent with a copy of the complaint and its supporting documents and require him to explain in writing and under oath why no formal charge/s shall be filed against him on the basis of the complaint.

Sec. 10. Period to Submit Explanation — The respondent shall be given not less than five (5) days from receipt of the order to submit his explanation. If the respondent fails or refuses to submit an explanation, the matter shall be resolved on the basis of the available documents.

Sec. 11. Investigation of Complaint — After the expiration of the period for filing an explanation, the Secretary or Head Prosecutor, as the case may be, shall conduct a fact-finding investigation to determine the merit of the complaint.

After investigation, the Head Prosecutor shall forward his report and recommendation to the Secretary for proper disposition.

Sec. 12. Dismissal of Complaint — If the Secretary finds the explanation of the respondent to be satisfactory, the complaint shall be dismissed. The complainant shall be informed of the dismissal by the Secretary of the complaint.

Sec. 13. Formal Charge — If the investigation establishes the existence of a prima facie case against the respondent, the Secretary shall file a formal charge against the respondent.

Sec. 14. Contents of Formal Charge — The formal charge against a respondent shall contain —

- a. a specification of the charge;
- b. a brief statement of the material or relevant facts constituting the act or omission complained of;
- c. a directive for the respondent to answer the charge in writing under oath within a period of not less than

seventy-two (72) hours from receipt thereof;

d. a notice for respondent to indicate in his answer whether or not he elects a formal investigation of the charge, and that he is entitled to be assisted by a counsel of his choice; and

e. a directive for respondent to attach to his answer certified true copies of the documentary evidence, together with the sworn statements of his witnesses, if any, in support of his defense.

Sec. 15. Failure or Refusal to Submit Answer — If the respondent refuses or fails to answer the formal charge within the prescribed period, he shall be deemed to have waived his right to be heard and to present evidence in his behalf. The investigator may forthwith resolve the case on the basis of the evidence on hand.

Sec. 16. Effect of Withdrawal of the Complaint — After the issuance of the formal charge, the withdrawal by the complainant of the complaint shall not result in the outright dismissal of the charge nor in the discharge of the respondent from any administrative liability where there is documentary or other evidence that would tend to prove the guilt of the respondent.

IV. PREVENTIVE SUSPENSION

Sec.17. Preventive Suspension — Upon the issuance of the formal charge or immediately thereafter, the Secretary may motu proprio, or upon petition of the complainant, order the preventive suspension without pay of respondent if the charge involves:

a. dishonesty;

b. grave misconduct;

c. gross negligence in the performance of duty; or

d. if there are reasons to believe that the respondent is guilty of the charge which would warrant his removal from the service.

Sec. 18. Period of Preventive Suspension — Unless the President directs otherwise, the period of the preventive suspension of a respondent shall not exceed ninety (90) days. If the formal investigation is not terminated within the said period, respondent shall be automatically reinstated unless the delay in the disposition of the case is due to the fault, negligence or any cause attributable to the respondent, in which case the period of such delay shall not be counted in computing the period of suspension.

Sec. 19. Remedies from Order of Preventive Suspension — Within fifteen (15) days from receipt of the order for his preventive suspension, the respondent may file a request for the reconsideration thereof with the Secretary. Only one request for reconsideration shall be entertained. If the request for reconsideration is denied, the respondent may appeal the same to the Office of the President within fifteen (15) days from receipt of the order of denial.

V. ADMINISTRATIVE CASE PROPER

Sec. 20. Designation of Investigating Officer — Upon the issuance of the formal charge, the Secretary shall designate an Investigating officer to conduct the formal investigation of the complaint and thereafter, to submit his findings and recommendation thereon.

Sec. 21. Powers of Investigating Officer — The Investigating officer shall have the power to issue summons, subpoena and other processes to all parties concerned, and to conduct formal hearings of the case, if necessary.

Sec. 22. Conduct of Formal Investigation — Although the respondent does not request a formal investigation, one shall nevertheless be conducted by the Investigating officer 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 need not adhere strictly to the technical rules of procedure applicable in judicial proceedings.

Sec. 23. Commencement and Termination of Investigation — The investigation shall be held not earlier than five (5) nor later than ten (10) days from receipt by the Investigating officer of the respondent's answer. As far as practicable, the investigation shall be terminated within thirty (30) days after the Investigating officer is formally notified of his designation as such.

Sec. 24. Recommendation of Investigating Officer — The investigating officer shall submit his written report and recommendation to the Secretary within fifteen (15) days from the termination of the investigation. The Secretary may revise, reverse, modify, affirm or set aside the report and recommendation of the investigating officer.

Sec. 25. Exoneration of Respondent — If the Secretary finds respondent not guilty of the charge, he shall order the dismissal of the case. The respondent and the complainant shall be furnished with a copy of the order of dismissal.

Sec. 26. Motion for Reconsideration of Complainant — The complainant may file with the Secretary a motion for the reconsideration of the order of dismissal within fifteen (15) days from receipt thereof. The action of the Secretary on the motion for reconsideration shall be final. Only one motion for reconsideration shall be allowed.

Sec. 27. Finding of Guilt — If there are sufficient grounds to find respondent guilty of the charge, the Secretary shall submit the corresponding Investigation Report, together with the entire records of the case, to the President. The Investigation Report of the Secretary shall be considered confidential.

VI. PENALTIES

Sec. 28. Imposable Penalties — In his report to the President, the Secretary may, depending on the gravity of the offense, recommend the imposition of any of the following penalties on a guilty respondent:

- a. dismissal with or without forfeiture of benefits provided for by law;
- b. demotion in pay or rank;
- c. suspension from service without pay; or
- d. reprimand.

Sec. 29. Alternative Circumstances — The following circumstances attendant to the commission of the offense may be considered in determining the imposable penalty:

- 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 government;
- k. education; or
- l. other analogous circumstances.

As a general rule, the above circumstances shall not be considered in the determination of the imposable penalty if they are not invoked or pleaded by the respondent in his favor. In the interest of substantial justice, however, the Secretary may consider the aforementioned circumstances.

VII. FINAL PROVISIONS

Sec. 30. Repealing Clause — All circulars and issuances inconsistent herewith are hereby repealed or modified accordingly.

Sec. 31. Effectivity — This Circular shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

Adopted: 05 June 2000

(SGD.) ARTEMIO G. TUQUERO
Secretary

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