GUIDELINES ON PNP PERSONNEL APPEARING IN CONGRESSIONAL HEARINGS AND INVESTIGATIONS

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I. REFERENCES:

a. Executive Order 464 and Memorandum Circular 108;

b. PNP Issuances on Appearance in Congressional Hearing; and

c. Lawyer's Briefing on Congressional Investigations presided by Deputy Executive Secretary Manuel Gaite on July 18, 2007 at Mabini Hall, Malacañang.

II. PURPOSE:

This Circular aims to provide the proper guidelines to be followed to avert problems that may be encountered in the course of Congressional hearings and investigations and to ensure the security of confidential information vital to national interest and to safeguard the rights of persons appearing thereat.

III. SCOPE OF APPLICATION:

This Circular shall apply to all PNP Personnel who are required to appear/testify before a committee of either House of Representatives or Senate on any matter pertaining to their department and thus, are required to secure a prior guidance from the Office of the President.

IV. DEFINITION OF TERMS:

a. Executive Privilege is the right of the President to withhold information from Congress, courts and the public which are sensitive in character. The power to invoke this privilege may also be delegated to the Executive Secretary with the premise that it is done "By the Order of the President".

b. Congressional Hearing is a meeting or session of a Senate, House, Joint, or Special Committee of Congress, usually open to the public, to obtain information and opinions on proposed legislation, conduct an investigation, or evaluate/oversee the activities of a government department or the implementation of a law.

c. Inquiry in aid of legislation may refer to the implementation or re-examination of any law or appropriation or in connection with any proposed legislation or the formulation of, or in connection with future legislation, or will aid in the review or formulation of a new legislative policy or enactment. They may also extend to any and all matters vested by the Constitution in the House of Representatives or the Senate.

d. Sub-judice matter is a Latin term for "under judgment," means that a particular case or matter is currently under trial or being considered by a judge or court.

e. Question of Law when the doubt or difference arises as to what the law is on a certain state of facts. A question of law must not involve an examination of the probative value of the evidence presented by the litigants.

V. GUIDELINES:

1. The power of the President to invoke the Executive Privilege is an exemption to the compelling power of legislative inquiry. Its scope include conversations and correspondence between the President and other person on matters of privilege, state secrets, including military, diplomatic and other national security matters as well as information between inter-governmental agencies prior to conclusion of treaties and executive agreements, discussion in close-door cabinet meetings, and matters affecting national security and public order.

2. The following invitations DO NOT require guidance from the Office of the President:

a. Hearings on Certified and Administration Bills;
b. Budget hearings;
c. Technical Working Group;
d. Previously approved hearings;
e. Legislative-Executive Oversight Committee hearings;
f. Providing Technical assistance to members of Congress; and
g. Confirmation hearings.

3. The Supreme Court decision in GUDANI vs. SENGA (G.R. No. 170165, August 15, 2006) is NOT APPLICABLE and CANNOT BE INVOKED by members of the PNP. Unlike the AFP, the PNP belongs to the civilian armed component of the Government.

4. During Congressional hearings, the PNP officer appearing must avoid reference to EO 464 and MC 108 but instead refer to the decision of the Supreme Court in the case of Senate vs. Ermita (G.R. No. 160777, April 25, 2006) which provided some guidelines on the conduct of inquiry in aid of legislation among which are:

a. Congress has the constitutional right to information in inquiries in aid of legislation;
b. Congress has the power to compel its disclosure;
c. The power may however be abused, hence subject to review by the courts;
d. The Rules of Procedure that are being used by Congress must comply with the requirements of publication;
e. The rights of persons appearing in the investigation must be respected;
and
f. The refusal to appear or speak in a congressional investigation may anchor on the Concept of Executive Privilege.

VI. PROCEDURES:

1. Upon receipt of the invitation by the PNP Office/Officer, the concerned office or officer must verify the COMPLETENESS of the invitation. The invitation is complete if the following concur in addition to the usual contents of an invitation:

> a. It must state the possible needed statute to be enacted to address the perceived problem area;
> b. It must state the subject matter to be required into; and
> c. It must state the questions related thereto.

2. The invitation must have been sent to the concerned office or officer at least fifteen (15) days prior to the day of the required appearance.

3. In the absence of any of the above contents mentioned earlier, the office or officer concerned may request from the person or office inviting, a stipulation of such items or for an extension of time as indicated in number 2. The request for extension will be anchored on the reasonable time needed to request for guidance from the Office of

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the President.

4. When the invitation is complete, the office/officer shall submit all the documents related to the inquiry and a Memorandum stating therein, among others, the recommendation of the concerned office or officer to the DIRECTORATE FOR PLANS which shall facilitate the request for guidance from the Office of the President (OP) unless other directorate or officer is authorized by the Chief, PNP to facilitate the request.

The LOLA-HOR and LOLA SENATE shall coordinate with the concerned Directorial Staffs and Congressional Committees regarding details of the hearing and perform other tasks as requested or directed.

5. The Directorate for PLANS shall now forward the invitation, memorandum and other supporting documents to the Office of the Secretary, DILG.

6. The Office of the SILG will likewise submit the invitation, memorandum and other attachments to the OP through the Presidential Legislative Liaison Office (PLLO). This primarily done to seek guidance from the OP based on the recommended action of the Office such as their attendance or non-attendance to the inquiry. In either recommendation, it must clearly state the reason/s therefore.

In cases where Executive Privilege is wanting, the memorandum must state the reasons why it should be availed of.

7. The OP shall consider whether the subject matter of the inquiry is in aid of legislation and/or falls within the scope of Executive Privilege. If the subject of inquiry is covered by Executive Privilege, the President or the Executive Secretary shall inform the Senate President or the Speaker of the House of Representatives, as the case may be, indicating the grounds and context of the subject.

8. If there is no guidance provided for by the OP, the person invited must appear at the hearing so as not to create prejudices with the members of Congress. However, prior to the commencement of the hearing, the PNP Officer must endeavor to relay to the Presiding Officer his or her limitations in appearing.

9. During the hearing proper, the following must be considered:

> a. The invited PNP member must be accompanied by a lawyer representative from the Legal Service;
>
> b. The assistance of a lawyer is needed when the right time to invoke the executive privilege should be made such as when the answer to the question qualifies as a privilege communication or correspondence. When this is apparent, permission is requested to confer with the OP since it already involves the privilege.

If the request for permission is denied, ask for a reconsideration. If the reconsideration is denied, manifest inability to answer the request and suggest to proceed to other questions. If it is again denied, manifest inability to continue as resource person. In availing these remedies, strict adherence to parliamentary procedures must be observed.

c. The questions that need not be answered and are considered grounds for judicial appeal:

> a. Questions containing arguments;
> b. Offensive or unparliamentary language;
> c. Sub-judice matters;
> d. Internal affairs of foreign countries;
> e. Those which seek an opinion on a question of law;
> f. Those falling within the responsibility of another agency;
> g. Previously asked and already answered questions;
> h. Violates guaranteed Constitutional and legal rights; and

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i. Immaterial to the subject of inquiry.

d. At any instance during the hearing, only the invited resource speaker is allowed to speak and not the counsel, unless the latter is allowed by the Presiding Officer.

e. The right to seek judicial redress should always be reserved.

VII. REPEALING CLAUSE:

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

VIII. EFFECTIVITY:

This Circular takes effect fifteen (15) days from the date of filing of 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: 23 Nov. 2007

(SGD.) AVELINO I. RAZON, JR.
Police Director General
Chief, PNP

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