

RULES RELATING TO CONTROL MEASURES ON INDUSTRY RISK FOR HIGH PROFILE CASES

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I. Purpose

In consonance with the mandate of the Office of the Ombudsman to promote and maintain honesty and integrity in the public service, including its commitment to integrate corruption resistance strategies into its various organizational facets in order to uphold organizational integrity and having taken cognizance of the occupational hazards and security risks faced by its investigators, prosecutors and lawyers in the performance of their duties and responsibilities, the instant guidelines are hereby issued to minimize/eliminate industry risk within the Office of the Ombudsman.

II. Scope

These Rules shall apply to all officials and employees of the Office of the Ombudsman.

III. Definition of Terms

Industry Risk - any risk which is closely associated with the fact-finding, preliminary investigation, administrative adjudication and prosecution of cases filed with the Office of the Ombudsman, including physical harm and other retaliatory moves against investigators, prosecutors and lawyers.

High Profile Cases - cases involving high ranking government officials and/or those occupying supervisory positions with Salary Grade 27 and above, complaints involving grave offenses in administrative cases and those punishable by afflictive penalties in criminal cases, as well as complaints involving large sums of money and/or properties.

Internal Control Measures _ all the policies, procedures, controls and devices that must be put in place to carry out solutions to industry risk.

IV. Guidelines in the Fact-finding Investigation, Preliminary Investigation and Administrative Adjudication of High Profile Cases

a. For Cases Subject of Fact-finding Investigation

1. Assignment of high profile cases subject of fact-finding investigation shall, as much as practicable, be done through raffle to be conducted by the Raffle Committee. In the conduct of the raffle of cases, the Raffle Committee shall always be guided by its prescribed rules and procedures. However, the Tanodbayan and/or concerned Deputy Ombudsman/Assistant Ombudsman of the Field Investigation Office (FIO) shall have the discretion to create special teams to handle high profile cases in accordance with the specialization required by each specific case. In the creation of a special team, the nature of the case as herein defined as a high profile case shall be considered, including the circumstance that the same is of national concern or with great impact on public interest. The team may include Directors, Assistant Ombudsmen, Deputy Special Prosecutors, Deputy Ombudsmen, the Special Prosecutor and the Overall Deputy Ombudsman.

The foregoing rules on the assignment of high profile cases subject of fact-finding investigation shall be without prejudice to the evaluation made by the Officer of the Day pursuant to Office Order No. 54-05, dated 25 May 2005, who may recommend the immediate referral of the complaint to the Field Investigation Office (FIO) for appropriate action and the creation of a special team with the task to conduct the necessary fact-finding investigation.

In area/sectoral offices, the same rules shall be observed with its Officer of the Day evaluating the complaint and recommending its immediate referral to its fact-finding unit for appropriate action and the creation of a special team for the purpose.

2. For high profile cases, a team of at least two (2) investigators shall conduct the fact-finding investigation within the shortest possible reasonable time to minimize pressure. In no instance shall fact-finding investigators have contact, directly or indirectly, with the person(s) subject of the complaint.

3. The members of the fact-finding team must maintain strict discipline to avoid committing any act or any premature disclosure of any information, action or report that might put on guard the subject(s) or that might cast doubt as to the integrity of the Office and its officers, in accordance with the Guidelines on Information and Document Security.

4. Diligent efforts must be exerted by the fact-finding team to gather all evidentiary requirements for case build-up and all documents, papers, sworn statements and other evidence gathered should form part of the case record. It shall be the responsibility of the fact-finding team to prepare the list of evidentiary requirements needed for case build-up, including the actual pieces of evidence gathered as the investigation progresses.

In no occasion shall suppression of evidence during fact-finding investigation be made.

5. To thresh out differences of opinions and to minimize the avenue of corruption and, thus, strengthen accountability, the Director/ Assistant Ombudsman shall discuss with the investigating team the merits and demerits of the case. In the event of differences in the findings and recommendations of the fact-finding team, the recommendation of the majority shall prevail, subject to review by higher authorities.

6. No re-assignment of high profile cases shall be made, unless authorized by the Tanodbayan or the Deputy Ombudsman/ Assistant Ombudsman concerned.

7. Regarding high profile cases involving high ranking government officials being investigated by the FIO, if the Assistant Ombudsman disagrees with the recommendation of the investigator/team and/or the Director concerned to dismiss the case, the Assistant Ombudsman shall create another team with the task to conduct further fact-finding investigation. If after the conduct of further fact-finding investigation, the recommendation to dismiss the case is upheld by the second team with the Assistant Ombudsman still maintaining his previous recommendation to file appropriate criminal or administrative complaints, the latter shall accordingly prepare and submit his separate opinion/comment, citing reasons therefor, together with the complete records of the case, to the Tanodbayan for his review and resolution; Provided, however, that if the Director disagrees with the recommendation of the investigator/team to dismiss the case but the Assistant Ombudsman agrees with the investigator/team, the Director shall prepare and submit his separate opinion/comment, citing reasons therefor. Said opinion/comment, together with the complete records of the case, shall be submitted to the Tanodbayan for his review and resolution.

In area/sectoral offices, the foregoing rules regarding high profile cases shall likewise apply. The recommendation of the Director shall be submitted to the Deputy Ombudsman concerned, who shall act on it in accordance with the delegation of authority contained in pertinent Office Orders/Memoranda issued by the Tanodbayan.

8. As part of the review process, fact-finding investigation reports involving high profile cases may be validated by another group duly set up for the purpose.

b. For Cases Subject of Preliminary Investigation

1. Assignment of high profile cases subject of preliminary investigation shall be done through raffle to be conducted by the Raffle Committee. In the conduct of the raffle of cases, the Raffle Committee shall always be guided by its prescribed rules and procedures. However, the Tanodbayan and/or concerned Deputy Ombudsman/Assistant Ombudsman (PAMO) shall have the discretion to designate a particular graft investigation and prosecution officer/ prosecutor or create a special panel to handle high profile cases if required by the attendant circumstances. In the creation of a special panel, the nature of the case as herein defined as a high profile case shall be considered, including the circumstance that the same is of national concern or with great impact on public interest. The panel may include Directors, Assistant Ombudsmen, Deputy Special Prosecutors, Deputy Ombudsmen, the Special Prosecutor and the Overall Deputy Ombudsman. In the event of differences in the findings and recommendations of the panel, the recommendation of the majority shall prevail, subject to review by higher authorities.

The foregoing rules on the assignment of high profile cases subject of preliminary investigation shall be without prejudice to the evaluation made by the Officer of the Day pursuant to Office Order No. 54-05, dated 25 May 2005, who may recommend the immediate creation of a special panel with the task to conduct the required preliminary investigation.

In area/sectoral offices, the same rules shall be observed with its Officer of the Day evaluating the complaint and recommending the immediate creation of a special panel for the purpose.

2. When a panel of at least three (3) investigators/prosecutors has been created and assigned to handle a high profile case, they shall conduct the preliminary investigation and terminate the proceedings within a reasonable period from the completion of the preliminary investigation.

3. All members of the panel must maintain strict discipline to avoid committing any act or any premature disclosure of any information, action or resolution that might cast doubt as to the integrity of the Office and its officers.

4. All orders, pleadings and evidence (whether documentary or testimonial) shall be carefully reviewed and scrutinized by the panel to check if there is due compliance with the requirements of due process and existence of probable cause.

5. The use of subpoena and the conduct of clarificatory hearings during preliminary investigation are encouraged; however, care and caution should be exercised in order to ensure that there is no violation of the requirements of due process and impartiality. In this regard, all subpoenas issued and clarificatory hearings conducted should be properly reported in writing to the immediate superior. The purpose for the issuance of each subpoena and the conduct of clarificatory hearing shall be indicated in the report. Further, minutes and stenographic notes of the clarificatory hearing conducted shall be taken. The foregoing shall thereafter form part of the records of the case.

6. To thresh out differences of opinions and to minimize the avenues of corruption and by way of strengthening accountability within the Office, the Director/Assistant Ombudsman shall discuss with the investigating panel the merits/demerits of the case.

7. In the conduct of the preliminary investigation of high profile cases involving high ranking government officials by the Preliminary Investigation, Administrative Adjudication and Monitoring Office (PAMO), if the

Director disagrees with the recommendation of the investigator/panel, he/she shall accordingly prepare and submit his/her separate opinion/ comment, citing reasons therefor. If the Assistant Ombudsman disagrees with the recommendation of the investigator/panel and/or the Director concerned, the Assistant Ombudsman may (a) submit his separate opinion/comment, citing reasons therefor; (b) refer the case to the same investigator or panel for further study; or (c) refer the case to another investigator or panel for review. If after the re-study of the case by the same investigator/panel or the review by another investigator or panel, the prior recommendation has been maintained, the Assistant Ombudsman shall accordingly prepare and submit his separate opinion/comment, citing reasons therefor. Said opinion/comment, together with the complete records of the case, shall be submitted to the Tanodbayan for his review and resolution.

In area/sectoral offices, the foregoing rules regarding high profile cases shall likewise apply. The written recommendation of the Director, together with the complete records of the case, shall be submitted to the Deputy Ombudsman concerned, who shall act on it in accordance with the delegation of authority contained in pertinent Office Orders/Memoranda issued by the Tanodbayan.

c. For Cases Subject of Administrative Adjudication

1. Assignment of high profile cases subject of administrative adjudication shall be done through raffle to be conducted by the Raffle Committee. In conducting the raffle of cases, the Raffle Committee shall always be guided by its prescribed rules and procedures. However, the Tanodbayan and/or concerned Deputy Ombudsman/Assistant Ombudsman (PAMO) shall have the discretion to designate a particular graft investigation and prosecution officer/ prosecutor or create a special panel to handle high profile cases if required by the attendant circumstances. In the creation of a special panel, the nature of the case as herein defined as a high profile case shall be considered, including the circumstance that the same is of national concern or with great impact on public interest. The panel may include Directors, Assistant Ombudsmen, Deputy Special Prosecutors, Deputy Ombudsmen, the Special Prosecutor or the Overall Deputy Ombudsman.

The foregoing rules on the assignment of high profile cases subject of administrative adjudication shall be without prejudice to the evaluation made by the Officer of the Day pursuant to Office Order No. 54-05, dated 25 May 2005, who may recommend the immediate creation of a special panel with the task to conduct the required administrative disciplinary proceedings.

In area/sectoral offices, the same rules shall be observed with its Officer of the Day evaluating the complaint and recommending the immediate creation of a special panel for the purpose.

2. When a panel of at least three (3) investigators/prosecutors has been created and assigned to handle a high profile case, it shall conduct the administrative disciplinary proceedings and terminate the same within a reasonable period from the completion of the administrative adjudication. In the event of differences in the findings and recommendations of the adjudicating panel, the recommendation of the majority shall prevail, subject to review by higher authorities.

3. All members of the panel must maintain strict discipline to avoid committing any act or any premature disclosure of any information, action or decision that might cast doubt as to the integrity of the Office and its officers.

4. All orders, pleadings and evidence (whether documentary or testimonial) shall be carefully reviewed and scrutinized by the panel to check if there is due compliance with the requirements of due process and existence of substantial evidence.

5. The use of subpoena and the conduct of clarificatory hearings during administrative proceedings are

encouraged; however, care and caution should be exercised in order to ensure that there is no violation of the requirements of due process and impartiality. In this regard, all subpoenas issued and clarificatory hearings conducted should be properly reported in writing to the immediate superior. The purpose for the issuance of each subpoena and the conduct of clarificatory hearing shall be indicated in the report. Further, the minutes and stenographic notes of the clarificatory hearing conducted shall be taken. The foregoing shall thereafter form part of the records of the case.

6. There should be strict adherence with the Rules of Procedure of the Office under Rule III of Administrative Order No. 7, as amended by Administrative Order No. 17, in the conduct of administrative adjudication of cases.

7. To thresh out differences of opinions and to minimize the avenues of corruption and by way of strengthening accountability within the Office, the Director/Assistant Ombudsman shall discuss with the adjudicating panel the merits/demerits of the case.

8. In the conduct of administrative disciplinary proceedings by the Preliminary Investigation, Administrative Adjudication and Monitoring Office (PAMO) with respect to high profile cases involving high ranking government officials, if the Director disagrees with the recommendation of the investigator/panel, he/she shall, accordingly, prepare and submit his/her separate opinion/ comment, citing reasons therefor. If the Assistant Ombudsman disagrees with the recommendation of the investigator/panel and/or the Director concerned, the Assistant Ombudsman may (a) submit his separate opinion/comment, citing reasons therefor; (b) refer the case to the same investigator or panel for further study; or (c) refer the case to another investigator or panel for review. If after the re-study of the case by the same investigator/panel or the review by another investigator or panel, the prior recommendation has been maintained, the Assistant Ombudsman shall accordingly prepare and submit his separate opinion/comment, citing reasons therefor. Said opinion/comment, together with the complete records of the case, shall be submitted to the Tanodbayan for his review and resolution.

In area/sectoral offices, the foregoing rules regarding high profile cases shall likewise apply. The written recommendation of the Director and the complete records of the case shall be submitted to the Deputy Ombudsman concerned, who shall act on it in accordance with the delegation of authority contained in pertinent Office Orders/Memoranda issued by the Tanodbayan.

V. Team Prosecution for High Profile Cases

1. In all high profile cases, a panel of at least three (3) prosecutors shall actively participate in the prosecution and formulation of the strategy to be adopted which shall include, but not limited to the determination of the witnesses to be presented, the order and manner of presentation, the documents needed and the fall-back strategy, if any.

2. The members of the panel must avoid placing his dissent or disagreement in writing which can be used by the accused as a ground to file petitions for certiorari (alleging grave abuse of discretion), disbarment and such other cases.

3. The public, including members of non- governmental organizations and law students, shall be encouraged to observe the performance of prosecutors during trials.

VI. Industry Risk Attendant to the Performance of Duties and Responsibilities

1. The possibility of threat and injury to life or limb is a recognized industry/security risk faced by investigators and prosecutors in the performance of their duties and responsibilities.

2. If the disgruntled party cannot get his way through, he may resort to retaliatory action against the investigator/prosecutor, including, but not limited to, the filing of harassment suits, frame-up, disbarment and all

other conceivable cases designed to taint the image and reputation of the investigator/prosecutor.

3. Recognizing the above industry/security risk, the Office must adopt strict security measures to protect its investigators and prosecutors from physical harm and other retaliatory moves, which may consist of the following:

- a. security guards must always require visitors to present proper identification, accomplish a Visitor's Slip, surrender firearms and other deadly weapons and maintain strict body check. As far as practicable, a computer system shall be devised to log in and generate visitors' identification cards as they come to the Office.
- b. as far as practicable, only witnesses/parties/ counsel with a subpoena or order to appear and testify and those with official business with the Office shall be allowed entry;
- c. prior permission from the bureau director concerned shall be secured by investigators, prosecutors, lawyers and other employees for visitors with personal purpose: a registry book of visitors shall be kept by each bureau and as far as practicable, said visitors shall be entertained at the designated visitors' area;
- d. inquiries on the status of cases shall be coursed only through the Public Assistance Bureau in the Central Office or through authorized officers at the area/sectoral offices; and
- e. surveillance cameras may be installed in strategic areas of the Office.

For complaints lodged with the Internal Affairs Board, it is the responsibility of the said Board to act on these complaints with dispatch. Further, it is the responsibility of the employees concerned to defend themselves before the IAB.

VII. Conduct of Lifestyle Checks on OMB Employees and Officials.

1. All OMB officials and employees must lead modest lives and avoid ostentatious display of wealth in consonance with the tenets of Republic Act No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees).
2. In this light, the Office of the Ombudsman shall have the responsibility to implement the provisions of the law and, if warranted on the basis of a complaint filed, investigate the activities of the subject officials and employees through the conduct of lifestyle checks and similar procedures.
3. Said conduct of lifestyle checks on OMB officials and employees shall be done discreetly and on a confidential basis to avoid exposing them to unnecessary embarrassment and harassment.

VIII. Periodic Review of Internal Controls

1. Internal control measures shall be reviewed annually or as the need arises to determine their effectiveness.
2. Every internal control measure shall be strictly implemented and innovations may be introduced if necessary to cope with the changing times.
3. The management must continuously be aware of the indicators and effects of corruption and must adopt means and methods to address the problem.

IX. Other Matters

- 1 Internal control measures must be set at a level that will ensure the highest standards of performance and integrity.
2. Transparent deterrent factors that exemplify the consequences and penalties for engaging in corruption shall be

made known and disseminated to all employees and officials.

3. The management must strengthen its capability to counteract the personal vulnerabilities of each employee/official to the potential agents of corruption, by conducting regular training and enhancement of security measures.

X. Penalty

Any violation of this Office Order shall be a ground for disciplinary action against any erring official or employee.

XI. Effectivity

This Office Order shall take effect fifteen (15) days after publication in the Official Gazette and upon the filing with the University of the Philippines Law Center of three (3) certified copies thereof.

SO ORDERED.

Adopted: 22 Aug. 2005.

(SGD.) SIMEON V. MARCELO
Tanodbayan

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