

Inter-Agency Anti-Graft Coordinating Council (IAAGCC) Guidelines of Cooperation

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TITLE I – PRELIMINARY PROVISIONS

CHAPTER 1
OVERVIEW

Historical Background

On June 11, 1997, the heads of the Office of the Ombudsman (OMB), the Commission on Audit (COA), the Civil Service Commission (CSC), the National Bureau of Investigation (NBI), and the Presidential Commission Against Graft and Corruption (PCAGC) signed a Memorandum of Agreement creating the Inter-Agency Anti-Graft Coordinating Council (IAAGCC). In their common fight against graft and corruption, they voluntarily agreed to bind their respective agencies to the following objectives:

1. to coordinate with one another;
2. to undertake inter-agency skills training programs; and
3. to promote inter-agency conferences.

On June 24, 1998, the Department of Justice (DOJ), represented by Secretary Serafin R. Cuevas, became a member of the Council as a result of *OMB-DOJ Joint Circular No. 95-001 (series of 1995)* designating the DOJ as OMB's deputized prosecutor in graft cases.

After a series of inter-agency meetings, seminars, dialogues, and conferences, the IAAGCC member agencies became aware that several of their functions and mandates impinge or overlap with one another, resulting in potential areas of conflict and confusion. However, the member agencies positively saw these areas of conflict as potential areas of cooperation, coordination, and assistance. Hence, they agreed to thresh out problems, resolve areas of conflict, and positively transform these to strong working relationships among themselves.

The IAAGCC decided to develop the *Guidelines of Cooperation* that will strengthen the working relationships among themselves and establish the criteria and operating procedures in: (a) creating Inter-Agency task forces that will investigate collective cases; (b) providing training programs for their personnel; and (c) establishing a communication and coordination center to facilitate information exchange and monitor relevant cases.

Objective

The objective is to develop a set of guidelines of cooperation acceptable to all member agencies.

Development of the Guidelines of Cooperation

The development of the *Guidelines of Cooperation* involved the following sub-activities: (a) Cooperation Development Workshops of the Inter-Agency Working Committee; (b) Writing of Guidelines of Cooperation and Consultations; (c) Validation Workshop; (d) Revision; and (e) Publication.

1. *Cooperation Development Workshops.* The Inter-Agency Working Committee, a core group of select senior officials from the member agencies, convened once a week for a period of five months and pursued the following objectives: discuss the roles and jurisdictions of each member agency; identify areas of cooperation; and identify problems and propose solutions.
2. *Writing of Guidelines and Consultations.* The initial output of the Workshop meetings of the Committee was the *Outline of the Guidelines of Cooperation*, which was approved by the Inter Agency Anti-Graft Consultative Committee (CONSULCOM). This outline was also a product of a series of consultations with regional offices of member agencies. The *Guidelines of Cooperation* shall cover the following: the conduct of the investigation; the selection of cases to be investigated; the procedures to be undertaken during investigation and in gathering evidence; the identification of the body responsible for reviewing the outputs; and the procedure in the prosecution of cases.
3. *Validation Workshop, Revision and Publication.* Selected participants from member agencies provided inputs to enhance the draft *Guidelines of Cooperation* during a conference/validation workshop. The final draft containing these inputs was presented to the CONSULCOM for approval. The final version of the *Guidelines of Cooperation* was duly approved by the authorized official of each member agency and subsequently reproduced for distribution to the concerned public officials and employees.

Rationale

Through the Guidelines, member agencies shall undertake the following: (a) cooperate and coordinate with each other and seek the assistance of and coordinate with civil society anti-corruption groups; (b) know the functions, capabilities, and working procedures of the members; (c) streamline procedures

to facilitate the disposition of cases; and (d) propose preventive measures when called for. These areas of cooperation seek to avoid duplication of functions that cause conflicting decisions, facilitate exchange of information on the status of cases, and assure technical assistance among member agencies.

On September 3, 1999, the IAAGCC signed a resolution adopting the *Inter-Agency Guidelines of Cooperation*.

The Inter-Agency Regional Dialogue-Workshops

The IAAGCC resolved that its success will depend primarily on the member agencies' understanding and full appreciation of the intent and substance of the *Inter-Agency Guidelines of Cooperation*. The IAAGCC then decided to expose the *Inter-Agency Guidelines of Cooperation* down to the regional levels. With the assistance of the Canadian International Development Agency-Policy Training and Technical Assistance Facility (CIDA-PTTAF), the IAAGCC launched a series of Inter-Agency Regional Dialogue Workshops on the *Inter-Agency Guidelines of Cooperation* with regional representatives of Luzon, Visayas, Mindanao, and NCR areas. These dialogue workshops were held in Cebu, Baguio, and Antipolo.

The objectives of these workshops were:

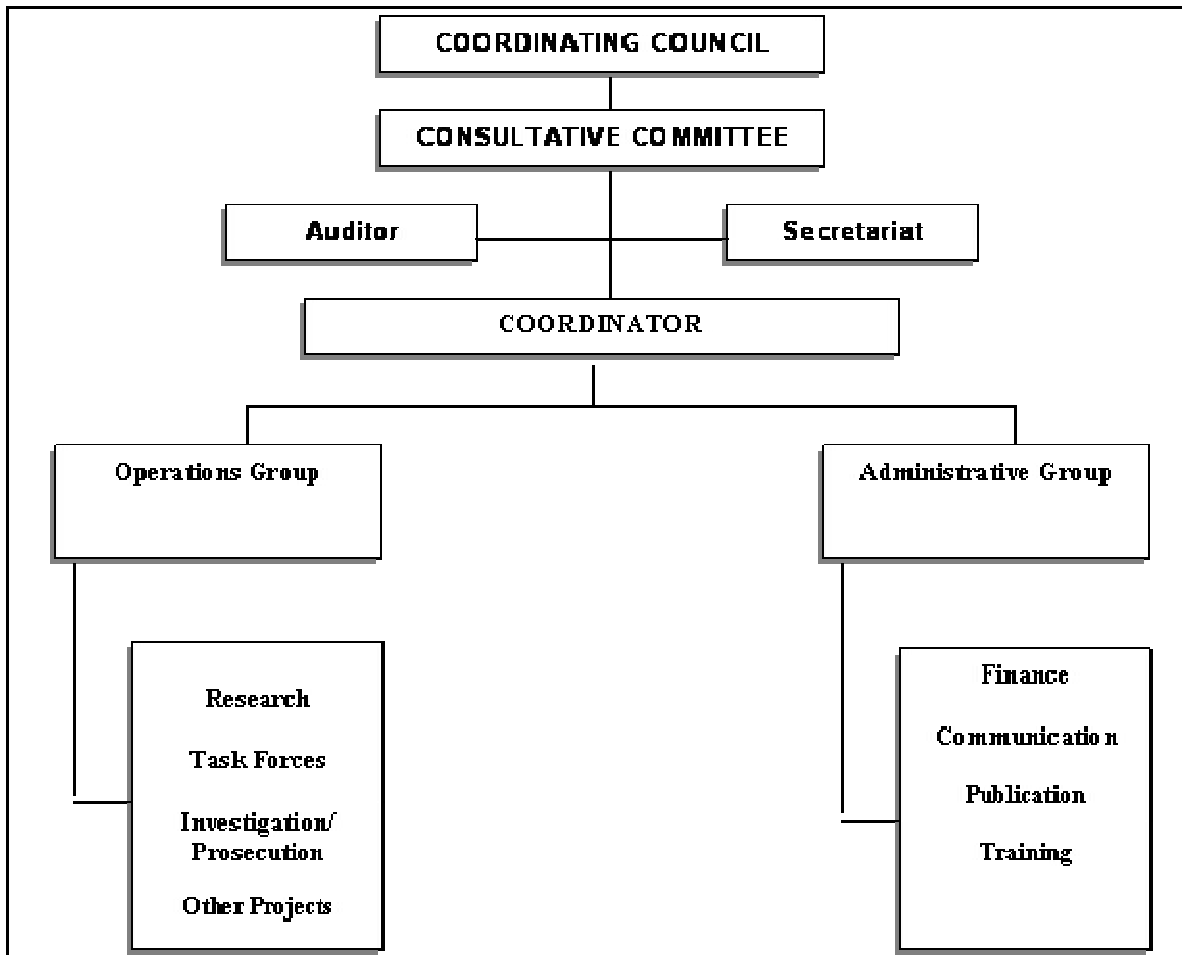
1. to provide a forum for auditors, investigators, and prosecutors to identify areas of work where coordination could be improved in the prevention, detection, investigation, and prosecution of graft and corruption;
2. to enable key staff of member agencies in the central and regional offices to review the *Inter-Agency Guidelines of Cooperation*; and
3. to identify operational and policy issues arising from the *Inter-Agency Guidelines of Cooperation*.

As a result of these workshops, the regional representatives came up with several proposals to improve the *Inter-Agency Guidelines of Cooperation* and strengthen the coordination among the member agencies in the fight against graft and corruption. The Technical Working Group incorporated these proposals and duly recommended the revision of the *Inter-Agency Guidelines of Cooperation*.

CHAPTER 2

INTER-AGENCY COORDINATING CENTER¹¹

The IAAGCC, pursuant to Resolution No. 3-98, created the Inter-Agency Coordinating Center to realize the objectives of the Council.



Composition and Functions of the Inter-Agency Anti-Graft Coordinating Council

Inter-Agency Anti-Graft Coordinating Council (IAAGCC)

1. The IAAGCC shall be composed of all Heads of the member agencies who are signatories to the Memorandum of Agreement dated June 11, 1997, as amended.

2. The IAAGCC shall meet regularly on the dates determined by the members or upon the request of any member through the Secretariat.
3. The IAAGCC shall have the following powers and functions: (a) to promulgate policies in addressing graft and corruption; (b) to strategize programs to be implemented in order to achieve the IAAGCC vision toward a graft-free and effective governance in a progressive nation; (c) to develop training for the personnel of its member agencies to enhance their skills for more effective prevention, detection, investigation and prosecution of cases involving graft and corruption; (d) to enlist the support of the civil society in the eradication of graft and corruption; (e) to promote cooperation through proactive and coordinated efforts of the member agencies in addressing graft and corruption, fraud and inefficiency in the government; and (f) to propose legislative initiatives in addressing graft and corruption.

Consultative Committee (CONSULCOM)

1. Pursuant to Joint Resolution No. 2-97, the CONSULCOM shall be composed of authorized representatives of each member agency with a rank not lower than deputy director/assistant secretary.
2. Unless the members agree otherwise, the regular meetings shall be held every first Wednesday of the month. Special meetings may be held upon request of any member. All meetings shall be coordinated through the Secretariat.
3. The CONSULCOM shall have the following functions: (a) to formulate and implement policies approved by the IAAGCC; (b) to propose IA projects for the approval of the IAAGCC; (c) to select and recommend to the IAAGCC cases to be assigned to the Inter-Agency Task Force; (d) to act on the recommendations of the Manager on matters involving the Project's scope, coverage and team composition; (e) to recommend the designation of officers/staff of the Center; and (f) to recommend the approval of the annual budget proposal for consideration of the IAAGCC.

Host Agency

The host agency shall perform the functions of Secretariat and Treasurer of the IAGCC. These functions shall be assigned to other members on a rotational basis every two (2) years, in order to promote a more dynamic and participatory way of formulating new strategies to combat graft and corruption.

The member of the COUNCIL of the host agency shall concurrently be the Chair of the IAAGCC.

The member of the CONSULCOM of the host agency shall concurrently be the Chair of the CONSULCOM.

Secretariat

The Secretariat shall provide administrative support to both the IAGCC and the CONSULCOM, and shall be directly under the latter. It shall perform the following functions:

1. Prepare agenda for meetings;
2. Arrange venue for meetings;
3. Prepare Minutes of the Meeting;
4. Draft Resolutions for the IAAGCC and the CONSULCOM; and,
5. Such other functions as may be assigned by the IAAGCC and the CONSULCOM

Auditor

The IAAGCC shall designate an Auditor from the Commission on Audit who will audit the financial transactions and render an annual report on the financial transactions of the body to the IAAGCC through the CONSULCOM.

Coordinator

The Coordinator shall be designated by the host agency and shall perform the following duties and functions:

1. monitor and supervise the activities of the Administrative Group and Operations Group;
2. sign contracts, agreements as well as to approve disbursements as may be delegated by the CONSULCOM;
3. act on all requests from the member agencies for services which can be rendered by the Administrative and Operations Groups;
4. act on training requests and assignment of resource persons;

5. review the annual budget for submission to the CONSULCOM;
6. submit regular reports to the CONSULCOM concerning the project status, financial positions and other reports as may be required; and
7. perform such other functions as may be assigned by the IAAGCC and the CONSULCOM.

Operations Group

The Operations Group shall have the following functions:

1. serve as the working committee tasked to review and update the Inter-Agency Guidelines of Cooperation and the Inter-Agency Task Forces which may be created to perform specific functions;
2. recommend to the Manager such changes affecting the composition of the team, scope and coverage of work as may be necessary;
3. conduct continuous research and study to enhance the effectiveness of IA functions; and
4. perform such other functions as may be assigned by the Manager.

Administrative Group

The Administrative Group shall have the following functions:

1. review the financial transactions relative to the receipt and disbursement of funds;
2. keep the books of accounts, and prepare financial reports thereon;
3. prepare the annual budget of the IAAGCC;
4. maintain property records of the IAAGCC;
5. design and establish an IT Network Center that will connect all member agencies;

6. acquire and maintain the IT hardware, software, and other equipment as approved by the IAAGCC;
7. establish and maintain an information data base management program as may be required by the CONSULCOM;
8. conduct training upon the request of a member agency and to maintain a roster of IA resource persons; and,
9. perform other administrative services/functions as may be directed by the Manager.

CHAPTER 3 DEFINITION OF TERMS

Administrative Adjudication

Administrative Investigation is an initial inquiry in an administrative proceeding similar to a preliminary investigation of a criminal complaint. Although an administrative investigation precedes the issuance of a formal charge, the *Inter-Agency Guidelines of Cooperation* do not consider it as investigation but merely part of administrative adjudication.

Administrative Adjudication begins upon the filing of a formal complaint, and may or may not involve a formal hearing.

The CSC does not use the term *administrative adjudication* but uses the term *formal investigation* to refer to formal hearing.

Graft

Graft refers to the use of public office for personal gain. Specific acts include bribery, frauds and illegal exactions/transactions (Section 2 to 4, Title 7, Revised Penal Code), and graft and corrupt practices listed in the Anti-Graft and Corrupt Practices Act.

Inter-Agency Case

Inter-Agency Case are those cases which the IAAGCC's Inter-Agency Task Forces (IATFs) are tasked to investigate at the fact-finding stage. These include fraud-related crimes involving P10 million and above, crimes involving

high ranking public officials from Bureau Director or its equivalent and higher, and other cases which the IAAGCC assigns to the IATFs.

Investigation

Investigation is the process of gathering and evaluating evidence to determine whether or not a person may be held administratively or criminally liable for committing or failing to perform certain acts; or may be required or ordered to perform a specific act.

It is synonymous with the following terms:

- criminal investigation as used by DOJ, NBI, and law enforcement agencies
- fraud audit or special audit as used by COA; and
- fact-finding as used by OMB, PAGC and CSC.

Preliminary Investigation

Preliminary Investigation is an inquiry in a criminal proceeding to determine whether or not probable cause exists for a criminal complaint to proceed to trial. At this stage, complainants and respondents submit their affidavits, together with the affidavits of their respective witnesses.

As used by the CSC and PAGC, preliminary investigation refers to the determination of the existence of a *prima facie* case to justify the issuance of a formal charge.

Probable Cause exists when the evidence submitted to the investigating prosecutor provides a substantial factual basis for inferring that a criminal or administrative offense was committed and the respondent probably committed it.

Respondent

Respondent refers to a person subject of investigation or preliminary investigation. The term *subject* is used in fact-finding while the term accused is used in criminal cases already filed with the courts.

TITLE II – MECHANISMS FOR COOPERATION

CHAPTER 1 COORDINATING CENTER AND MONITORING UNITS

Section 1. *Establishment of the Inter-Agency Coordinating Center; Establishment of an Information Exchange Network.* The Inter-Agency Coordinating Center (IACC) shall be equipped with the latest communication facilities to expedite actions on complaints (including entrapment operations) and requests for information/statistics on graft cases. It shall perform the following functions:

1. serve as the central repository of all records/information concerning IA activities;
2. coordinate with the Agency Monitoring Units (AMUs) of all IA members;
3. maintain files on the *modus operandi* in the commission of fraud related offenses;
4. maintain a computer database of case profiles and statistics;
5. disseminate information/instructions among member agencies;
6. monitor the activities of the Inter-Agency Task Forces (IATFs);
7. maintain and compile all reference materials for IA use;
8. serve as the hotline center of the IAGCB;
9. publish or issue press releases on successfully prosecuted cases and those pending in courts; and
10. promote public awareness and involvement in IA programs against incidence of graft and corruption by:
 - a. establishing hotlines in member agencies;
 - b. immediately responding to complaints;
 - c. assuring confidentiality of information;
 - d. disseminating information on causes and effects of graft and *modus operandi* in the commission of graft;
 - e. emphasizing the primary responsibility of agency head in the prevention and detection of graft and corruption; and
 - f. coordinating with the Philippine Information Agency (PIA) and other public offices in disseminating information on the evils of graft and corruption.

Section 2. *Training of Personnel on Technical Skills; Areas of training on technical skills; Targeted participants.* The training programs shall include the following: identification of risk factors in different government agencies, background investigation, money laundering, *modus operandi* of subjects, funds transfers, jurisprudence on anti-graft laws, surveillance, questioned document examination, interview and interrogation, undercover operations, computer skills and information technology, presentation of evidence in court, tax fraud schemes, preservation and security of documents and other evidence, net worth analysis, intellectual property laws, environmental laws, and firearms training.

To maximize the benefits from the training programs, the participants must have the adequate skills, qualifications, and experience. The participants must be involved in audit examination, fact-finding, preliminary investigation, administrative investigation and adjudication, and prosecution of graft and fraud cases.

In the selection of participants, priority shall be given to those who have relevant experience and/or have attended related training programs.

Section 3. *Monitoring of Cases; Establishment of Coordinating Offices; Inter-Agency Coordinating Center (IACC).* The IACC shall serve as the central monitoring office of member agencies.

It shall receive from and disseminate to member agencies information and documents relative to IA cases, activities, and other areas of common concern. It shall submit monthly reports to the IAAGCC and the CONSULCOM.

All inquiries and requests for information from duly authorized officials of member agencies shall be properly recorded in a logbook. The action taken on such requests/inquiries, the dissemination, or the receipt by the concerned member agency of the needed information or documents shall be recorded in a separate logbook.

To facilitate information exchange between member agencies, the IACC shall:

1. keep track of requests for information and inquiries from one member to another;
2. monitor the response/reaction time of the concerned member agency; remind member agencies to promptly address requests/inquiries;
3. regularly update its computer data base, *modus operandi* files, case profiles, statistics, reference materials; and

4. utilize efficient and reliable means of communication.

Section 4. *Agency Monitoring Units (AMUs).* Each member agency shall establish an AMU, under the supervision of the CONSULCOM member, to perform the following functions:

1. maintain records of complaints/request for investigation/official reports pertaining to graft and corruption cases, referrals and requests for assistance requiring the coordination of two or more member agencies;
2. submit reports on the status of complaints and requests for assistance, investigation, etc. to the IACC and the requesting member agency;
3. monitor and coordinate with the regional, sectoral/area monitoring units;
4. maintain and compile reference materials and provide the IACC copies therefor;
5. coordinate/inform the witness/es of scheduled hearings; and
6. inform the proper offices on the availability of witnesses.

Section 5. *Regional Monitoring Units (RMUs).* The Head Office of each member agency shall establish a coordinating unit in their respective regional/sectoral/area offices, to perform the functions of the AMUs enumerated above as well as to supervise the provincial/city or district monitoring units.

Section 6. *Provincial/District/City Monitoring Units (PMUs/DMUs/CMUs).* The respective/sectoral/area offices of each member agency shall designate PMUs/DMUs/CMUs, if applicable, to perform the functions of the AMUs enumerated above. Their specific functions, among other things, shall be as follows:

1. coordinate/inform the witness/es of scheduled hearings; and
2. inform the proper offices on the availability or non-availability of witness/es.

Section 7. *Requests for Assistance and Referral of Complaints, Cases, Official Reports.* All requests for assistance, coordination, and appropriate action as well as referral of complaints, cases, and official reports from one member agency to another shall be coursed through the appropriate channels.

Section 8. *Complaints, Cases, and Official Reports from Provincial/City or District Offices of Member Agencies.* Whenever a provincial/city or district office of a member agency requests assistance from and/or coordinates with another member agency in regard to a complaint, case, or official report; or refers the same for appropriate action to another member agency, the said office shall promptly do the following:

1. Prepare a case profile a sample of which is found in Annex II, Appendix A stating the following:
 - a. title of the case or official report and the docket/case/record number thereof;
 - b. the government agency involved and its address;
 - c. action taken by the provincial, municipal, or district office on the case and the factual antecedents of such action;
 - d. brief narration of the facts/information pertinent to the case/transaction and the amount involved therein;
 - e. brief description of the documents/evidence gathered;
 - f. when applicable, the names of the public officials/employees and private persons who appear to be liable for violation of penal laws and/or administrative rules in regard to the transaction/s under consideration.
 - g. information on cases/complaints/transactions involving any of the said officials/employees and private persons that were investigated by the concerned provincial, district, or city office before the establishment of the IA monitoring system where the investigation conducted resulted in the filing of criminal and/or administrative complaints with the proper offices; and
 - h. assistance or action/s requested of the other member agencies.
2. Make the necessary entries in its main logbook, in the separate logbooks for the member agency with whom coordination or from whom assistance or other action is sought, and its computer database, if any;
3. Prepare the necessary documents to be submitted to the concerned provincial, district, city, regional/area/sectoral, or central office/s of the member agency, from whom action or assistance is sought;
4. Submit the case profile and other pertinent documents/records to the concerned regional or area/sectoral office together with an information on the action so far taken by the other member agency, copy furnished the AMU and the concerned PMU/DMU/CMU, if

any, of the member agency requesting coordination, assistance, or action; and

5. Retain a copy of the case profile and pertinent records.

The AMU of the requesting member agency shall, thereafter, promptly transmit the necessary documents/records to the IAAGCC together with any additional documents/information of the case or on the persons involved therein. The requesting member agency's AMU shall accordingly inform its concerned regional/area/sectoral, provincial, district, or city offices of the transmittal to and receipt by the IAAGCC of the documents/information.

Section 9. *Action to be taken upon receipt of pertinent records by the Regional/Sectoral/Area Offices.* Upon receipt of the case profile and other pertinent documents from provincial, district, and city offices, the regional or sectoral/area office of the member agency requesting assistance, coordination, or action shall promptly do the following:

1. Make the necessary entries in its main logbook, its separate logbook for the concerned member agency, and its computer database;
2. Prepare, when applicable, an addendum to the case profile which contains information on cases, complaints, transactions involving any of the said officials or employees and private persons who were investigated by the regional/provincial/city/district/area/sectoral offices, where the investigation resulted in the filing of criminal and/or administrative complaints with the proper office/s, or when there are other pending investigation involving the same persons, if any;
3. Transmit the necessary information/records to its AMU, copy furnished the IACC;
4. Inform the concerned regional/area/sectoral office of the requesting member agency of its receipt of the case profile and other pertinent information/records;
5. Both the regional or area/sectoral offices of the requesting and receiving member agencies shall, thereafter, duly inform the IACC of the receipt of the request, documents, or other information.

The concerned regional/sectoral/area office shall promptly act on the request and inform the requesting member agency of any action taken thereon.

Section 10. *Referral to any Department, Bureau, Service, Office, Division, or Section of another Member Agency.* Whenever the Head Office (or any department, office, bureau, division) of a member agency refers a case, complaint, or official report to the central office of another member agency, or when it requests assistance, coordination, or action from the latter, the requesting member agency shall promptly do the following:

1. Prepare a case profile;
2. Make the necessary entries in its logbook, in the separate logbook/s of the member agency with whom coordination or from whom assistance or other action is sought, and in its computer database;
3. Prepare the necessary documents to be submitted to the Head Office of the member agency from whom action or assistance is sought;
4. Submit the case profile and other pertinent documents/records to the AMU together with an information on the action so far taken by the other member agencies, if any;
5. The AMU shall, in turn, transmit the case profile and other pertinent information and documents to the Inter-Agency Coordinating Center (IACC); and
6. Retain a copy of the case profile and pertinent records.

Section 11. *Periodic Reporting on the Status of Cases/Referrals.* The AMUs shall regularly monitor and report the status of cases, referrals, and requests through proper channels and shall promptly transmit monthly status reports to the IACC.

A member agency seeking information on the status of a case or request shall duly inform its AMU. The concerned office of a member agency shall promptly transmit the needed information and shall inform its AMU of the action taken on the case or request. The IACC shall accordingly be informed.(See Annex II, Appendix B)

CHAPTER TWO INTER-AGENCY TASK FORCE(S)

Section 12. *Creation.* The CONSULCOM shall create Inter-Agency Task Forces (IATFs) which shall investigate an IAAGCC case. (See Annex II, Appendix C). For this purpose, an IAAGCC case is determined by the CONSULCOM through a simple majority vote, and on the basis of **any** of the following:

1. Fraud-related crimes involving P10 million and above;
2. Crimes and administrative offenses involving high ranking public officials from Bureau Director or its equivalent and higher; or
3. Such other cases that the CONSULCOM may consider based on, but not limited to, the following criteria:
 - a) of national importance
 - b) verifiability

Section 13. *Composition.* The CONSULCOM shall designate the lead agency of the task force(s), and its composition shall be based on the nature and requirements of the cases to be investigated.

Section 14. *Deputation by the OMB.* The OMB shall deputize the members of the IATFs as investigators.

Section 15. *Docketing of Complaints.* To ensure effective tracking and retrieval of records, every complaint considered by the CONSULCOM as an IA case in accordance with Section 12 shall be assigned by the Secretariat a docket number before forwarding the same to the IATF.

The docket number shall contain the following:

- a. The acronym IATF;
- b. The first 3 letters of the month and the last two digits of the year the case was received;
- c. The numbers in a serial order as the complaints are received;
- d. The number of the lead agency, using the following numbers as codes.
 - 1- Ombudsman
 - 2- NBI
 - 3- CSC
 - 4- DOJ
 - 5- PAGC

6- COA

e.g. IATF-JAN-03-0001-1

Section 16. *Referral to the Task Force.* After docketing, the IAAGCC Case shall be referred to the IATF for initial evaluation.

Section 17. *Conduct of an Initial Evaluation.* Upon receipt of the complaint, the IATF shall evaluate it, assessing the merits of the case, the financial and personnel requirements, and the time element. The Task Force shall submit an initial evaluation report within 10 working days to the CONSULCOM.

Section 18. *Approval of the Initial Evaluation Report.* The evaluation report submitted by the IATF shall be approved by the CONSULCOM for the IATF to proceed with the conduct of the investigation proper.

Section 19. *Conduct of Investigation.* In the conduct of investigation, the IATF shall:

- a.) Gather all pertinent documents, information and evidence for case build-up;
- b.) Interview witnesses and obtain sworn statements and affidavits;
- c.) Determine and assess the probable criminal and administrative offenses committed; and
- d.) Upon termination of the investigation, the IATF shall forward the records of the case together with its findings and recommendations to the CONSULCOM for appropriate action.

Section 20. *The IATF Investigation Report.* The IATF shall submit to the CONSULCOM its investigation report within ten (10) working days from the termination of the investigation. The report shall contain, among others, the following:

- a.) Statement of the case and the authority to investigate;
- b.) Allegations;
- c.) Methodology and scope of the investigation;
- d.) Findings;
- e.) Conclusion which states whether or not penal laws and/or administrative rules were violated, and in the proper case, the persons who violated such laws and rules;
- f.) Recommendation either for the referral of the case to the OMB or for the dismissal of the case; and
- g.) Draft of a nominal complaint, if recommendation is for the filing of administrative or criminal charges.

Section 21. *Approval of Report.* The final report of the IATF shall be submitted to the CONSULCOM for its approval.

Section 22. *Recommendation of CONSULCOM.* Upon receipt of the final investigation report of the IATF, the CONSULCOM shall submit its recommendations within 10 days for approval of the Council.

Section 23. *Nominal Complainant.* The representative of the lead agency of the IATF shall act as the nominal complainant where the initiating complainant is unwilling to be named as such, or when the case is initially based on an unsubstantiated media report or news item, or when the investigation is initiated by a member agency.

Section 24. *Custodianship of Records.* Notwithstanding the provisions of Section 4, the IACC shall be the central repository of all records pertaining to IATF cases.

Section 25. *Expenses.* The maintenance and other operating expenses incurred by members of the IATF shall be charged against their respective agency's budget.

TITLE III – AREAS OF COOPERATION

CHAPTER 1 SCOPE OF AUTHORITY

Section 26. *Criminal Cases.*

a) *Investigation.* The NBI and OMB have concurrent authority to investigate graft and fraud cases involving public officials and employees, except those who, pursuant to the Constitution, may be removed from office only through impeachment.

b) *Special Audit.* The COA has primary authority to conduct the audit/examination of all transactions involving receipt and disbursement of public funds. In proper cases, the COA may initiate the filing of appropriate criminal complaints against the public officials and employees found to have participated in illegal/irregular transactions.

c) *Preliminary Investigation.* The OMB shall have primary authority to conduct preliminary investigation on criminal cases within the jurisdiction of the

Sandiganbayan. In cases falling within the jurisdiction of the regular courts, the DOJ and OMB shall have concurrent jurisdiction to conduct Preliminary Investigation. Provided, that in offenses committed in relation to office, the resolution of the DOJ and the corresponding information where the recommendation is for filing, shall be subject to the approval of the OMB.

d) Prosecution. The OMB shall have exclusive authority in the prosecution of offenses cognizable by the Sandiganbayan. Cases filed with the regular courts against officials and employees with salary grade below 27 involving violation of R.A. 3019, R.A. 1379, and Chapter II, Title VII, Book II of the Revised Penal Code, and all other cases where the offense is committed in relation to office, shall be prosecuted by the DOJ under the authority of the Ombudsman.

Section 27. Civil Cases.

a) Money Claims. The COA has authority to decide or settle all cases involving money claims for or against the government.

b) Recovery of Ill-Gotten Wealth. The OMB has authority over all cases involving recovery of ill-gotten wealth after February 26, 1986.^[2]

Section 28. Administrative Cases.

a) The OMB shall have disciplinary authority over all elective and appointive officials of the government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over members of Congress, and the judiciary.

b) The CSC shall have concurrent disciplinary authority against all appointive career and non-career civil service officials and employees.

c) Any member agency shall have original concurrent disciplinary authority over its own personnel.

d) Pursuant to the disciplinary authority of the President, the PAGC shall have concurrent authority to investigate and hear administrative cases or complaints against Presidential appointees occupying the positions of assistant regional director, or an equivalent rank and higher, otherwise classified as salary grade 26 and higher and those who are members of the governing board of any instrumentality, regulatory agency, chartered institution and directors or officers appointed or nominated by the President to government-owned or controlled

corporation or corporations where the government has minority interest or who otherwise represent the interests of the government.

CHAPTER 2

FACT-FINDING INVESTIGATION

Section 29. *Referral System for Complaint, Official Report, or Request for Investigation/Special Audit.* A member agency may refer a complaint, official report, or request for investigation/special audit to the head of the requested member agency by sending two (2) sets of the following documents:

1. case profile^[3];
2. basic documents;
3. certified true copies of documentary annexes; and
4. index of documentary annexes and other evidence.

The AMU should be furnished a copy of the request and the case profile.

Section 30. *Docketing of Complaint, Official Report, or Request for Investigation/Special Audit.* Upon receipt by a member agency of such complaint, official report, or request, its central/main records office shall provide a docket number in accordance with its general docketing system.

The AMU upon receipt of the request and case profile shall immediately record the complaint, official report, or request in the following:

1. its main logbook;
2. its computer database; and
3. a separate logbook for the requesting member agency.

It shall accomplish the case monitoring form for investigation/fact-finding.^[4]

Section 31. *Transmittal and Recording of Complaint, Official Report, or Request for Investigation/Special Audit with the Concerned Office/Bureau/Division/Section/Unit.* The central/main/records office shall immediately transmit to the concerned office, bureau, division, section, or unit

that will conduct the necessary investigation, special audit, or other related action.

The concerned office, bureau, division, section, or unit of the receiving member agency shall record the complaint, official report, or request in the following:

1. its main logbook;
2. its computer database; and
3. a separate logbook for the requesting member agency.

Section 32. *Initial Action on Complaint, Official Report, or Request for Investigation/Special Audit.* The member agency shall immediately assign the complaint, official report, or request to its proper office, unit or investigators. It shall then evaluate the available evidence and information to determine the proper action/s to be taken.

In proper cases, representatives of the concerned member agencies shall coordinate and confer with each other to discuss evidentiary requirements and other matters. The receiving member agency shall immediately inform, in writing, the requesting member agency of the action it has taken or will take thereon.

If the action/s taken is/are embodied in a report duly approved by the authorized official/s of the receiving member agency, it shall immediately transmit a copy of said report to the requesting member agency.

Section 33. *Manner of Conducting Investigation, Special Audit, or Other Action.* The investigation, special audit, or other action of the receiving member agency shall be done in accordance with its own rules of procedure, policies and guidelines.

All the evidence gathered during an investigation or special audit must be carefully evaluated to determine whether or not a formal complaint/charge shall be filed for preliminary investigation, administrative adjudication, or for other action.

Cases where the evidence is strong, or those involving high-ranking officials or substantial amounts shall be given priority in the filing of formal complaints.

Section 34. *Contents of Investigation/Special Audit Report.* The investigation/special audit report shall include, among other things, the following: methodology and scope of the investigation/special audit;

1. findings;
2. conclusion which states whether or not penal laws and/or administrative laws were violated;
3. person/s who appear to have violated penal laws and administrative rules; and
4. recommendation whether or not the findings shall be referred for preliminary investigation and/or administrative adjudication, or for any other appropriate action.

Section 35. *Annexes to Investigation/Special Audit Report.* The investigation/special audit report must be accompanied by the following:

1. certified true copies of all documentary annexes properly marked/paged;
2. index of documents and other evidence;
3. list of the complainants and witnesses, their addresses and/or contact numbers; and
4. updated case profile prepared by the AMU of the member agency that conducted the investigation/special audit.

Section 36. *Formal Complaint for Preliminary Investigation and/or Administrative Adjudication.* If after an investigation or a special audit, the NBI, FFIB or COA recommends the filing of criminal and/or administrative charges, the investigator/team shall execute an affidavit-complaint duly signed by its appropriate officials.

The affidavit complaint must briefly state the acts constituting the offense/s committed. In proper cases, a member agency with the appropriate technical expertise shall assist in the drafting of the affidavit-complaint.

The concerned member agency shall submit to the DOJ or OMB as many sets of affidavit-complaints and documentary annexes as there are respondents plus two (2) sets.

Section 37. *Requests for Technical Assistance.* A member agency shall give priority to all requests for questioned documents examination, entrapment, audit, surveillance, and other forms of technical assistance.

The docketing and recording of requests for technical assistance shall be the same as in the docketing and recording of complaints, official records and requests for investigation/special audit.

Section 38. *Anonymous Complaints.* A member agency shall evaluate anonymous complaints to determine whether or not there is sufficient verifiable leads to justify an open investigation.

If the leads in an anonymous complaint are insufficient, the member agency may conduct discreet/confidential investigation, develop and pursue the available leads, or take any appropriate action thereon. At this stage, the subject may not be required to comment on the anonymous complaint.

No member agency shall refer an anonymous complaint to another unless the complaint has verifiable leads and the specific action/s requested is/are within the technical expertise or competence of the latter.

A member agency shall investigate anonymous complaints involving its own officials or employees.

Section 39. *Copies of Complaints Referred to Other Member Agencies.* Member agencies shall not act on complaints principally addressed to another member agency, but a copy of which was furnished to them. Such member agency shall refer the same to the concerned member agency for the latter's appropriate action, and shall inform the complainant accordingly.

Section 40. *Accomplishment of Case Monitoring Forms.* To facilitate the monitoring of complaints, and requests for assistance, all member agencies shall promptly accomplish the appropriate monitoring form/s and furnish the concerned member agencies.

CHAPTER 3 PRELIMINARY INVESTIGATION

Section 41. *Filing of Complaint.* Any offended party, competent person, law enforcement agency (NBI, PNP, FFIB, etc.), or member agency may directly file a complaint against any public official with either the DOJ or OMB, whichever has jurisdiction as provided under par. 3. Section 19 of these guidelines.

Section 42. *Contents of the Complaint.* The complaint shall contain the following:

1. full and complete name/s and address/es (home or office) of the complainant/s and his witnesses;
2. full and complete name/s and address/es (home or office) of the respondent/s;
3. the offense charged, the place and time of commission and all pertinent documents and evidence; and
4. certificate of non-forum shopping.

Section 43. *Affidavits and Supporting Documents.* The complaint shall be accompanied by the affidavit/s of witness/es as well as other supporting documents/evidence to prove the allegations in the complaint. The number of copies shall be as many as the number of respondents plus two (2) sets.

The complaint and affidavit/s of witness/es shall be in the original or duplicate original, together with authenticated copies of all supporting documents attached thereto.

The complaint and affidavit/s of witness/es shall be sworn before a City, Provincial or state prosecutor or other public official authorized to administer oaths, or in their absence or unavailability, a notary public, who must certify that he/she personally examined the affiant/s and that he/she is satisfied that they voluntarily executed and understood their affidavits.

Section 44. *Initial Action on the Complaint.* Upon receipt of the complaint, the investigating prosecutor shall evaluate the same within ten (10) days from receipt thereof. He/She shall, among other things, determine whether the case is within the original jurisdiction of the Sandiganbayan¹⁶¹ or the regular courts.

If the offense charged in the complaint was committed outside the territorial jurisdiction of the office of the investigating prosecutor, the same shall be referred to the appropriate prosecutor.

If he/she finds no ground to continue with the preliminary investigation, the investigating prosecutor shall dismiss the complaint. Otherwise, he/she shall issue a *subpoena* to the respondent, together with copies of the complaint, affidavits of witnesses and other supporting documents. He shall direct the respondent to file his counter-affidavit and other controverting evidence and furnish copies to the complainant within ten (10) days from receipt of the *subpoena*.

Respondent's counter-affidavit must be subscribed and sworn to before a public prosecutor or government official authorized to administer oath or in their

absence or unavailability, a notary public, who must certify that he/she has personally examined the affiants and that he/she is satisfied that they voluntarily executed and understood their affidavits. Any memorandum, manifestation or motion to dismiss signed by respondent's counsel cannot take the place of a counter-affidavit and thus cannot controvert complainant's evidence. But if such manifestation, memorandum, or motion to dismiss is signed by the respondent, it can still be treated as his counter-affidavit.

Section 45. *Grounds for the Dismissal of the Complaint.* The following are the grounds for the dismissal of a complaint:

1. Prescription. The offense charged had already prescribed at the time of the filing of the complaint;
2. Lack of Cause of Action. The acts and/or omissions alleged in the complaint and/or supporting affidavits do not sufficiently show that a criminal offense or violation of a penal law has been committed.
3. Failure to Comply with Formal Procedures. The complaint and the supporting affidavits are unsigned and/or have not been duly subscribed under the Rules on Criminal Procedure; or
4. Constitutional Prohibition. The respondent is an impeachable officer.

Section 46. *Rule on Extension of Time to File Counter-Affidavit.* The investigating prosecutor shall not allow motion for extension of time to file counter-affidavit/s, save in cases mentioned in the succeeding section, but in no case shall the extension of time to submit counter-affidavit exceed ten (10) days.

The City/Provincial Prosecutor, Chief State Prosecutor, or the Ombudsman or his Deputies may authorize additional extensions.

Section 47. *Exception to Prohibition on Extension of Time to File Counter-Affidavit.* When the interest of justice demands, the respondent is usually given reasonable time or sufficient opportunity to : (a) engage the services of counsel to assist him in the investigation proceedings; (b) examine or verify the existence, authenticity or accuracy of voluminous records, files, accounts or other papers or documents submitted in support of the complaint; or (c) undertake studies or research on complicated or technical questions or issues of law and of facts attendant to the case under investigation.

Section 48. *Personal Service of Documents by Investigating Prosecutor.* Whenever circumstances warrant and in order to prevent the loss of documents during the service of a *subpoena* by ordinary mode, the investigating prosecutor may require the attendance of respondent or other parties at a designated date,

time and place. During such time, he/she shall personally furnish the latter copies of the complaint, supporting affidavits, and other supporting documents.

If the respondent or his/her counsel/representative fails to appear before the investigating prosecutor at such designated time despite receipt of notice or *subpoena*, he/she is deemed to have waived or forfeited his/her right to be furnished copies thereof, as well as to examine all other evidence submitted by complainant.

If respondent/s or other parties are residing in distant places, the investigating prosecutor shall issue and send the subpoena, together with copies of the complaint, supporting affidavits and other documents, by registered mail with return card.

Section 49. *Reply-Affidavits and Rejoinders.* The parties may file reply-affidavits and/or rejoinders within five (5) days from receipt of the counter-affidavit or reply-affidavit, as the case may be.

Section 50. *Clarificatory Questions.* The investigating prosecutor may set a hearing to ask clarificatory questions to the parties or their witnesses if he/she believes that there are matters that he/she needs to inquire personally. In said hearing, the parties shall be afforded the opportunity to be present but they are not allowed to cross-examine. If they have any questions, they may submit these in writing to the investigating prosecutor who may ask such questions to the parties or witnesses concerned.

Section 51. *Resolution.* The preliminary investigation is deemed concluded and the investigating prosecutor shall resolve the case in the following instances:

1. upon submission by the parties of their respective affidavits and supporting documents, he/she shall resolve the case based on the evidence thus adduced and determine whether or not there is sufficient ground to hold respondent for trial; and
2. if the respondent cannot be subpoenaed, or if subpoenaed, fails to submit his/her counter-affidavit within the reglementary period, he/she shall base his/her resolution on the evidence presented by the complainant.

Section 52. *Period of Resolution.* The investigating prosecutor shall resolve the case within the mandatory period of sixty (60) days from receipt hereof. Otherwise, he shall request extension from the City/Provincial Prosecutor, Chief State Prosecutor, or the Ombudsman or his/her Deputies as the case may be before the expiration of said period. If he/she finds probable cause against respondent, he/she shall prepare the corresponding Information/s

against the respondent/s. Otherwise, he/she shall recommend the dismissal of the complaint.

Section 53. *Action of the City/Provincial/Chief State Prosecutor or Ombudsman or his/her Deputies.*

1. Upon receipt of the record of the case and the resolution, the City/Provincial Prosecutor, Chief State Prosecutor, or the Ombudsman or his/her Deputy shall act thereon and within fifteen (15) days inform the parties of the action taken.
2. The City/Provincial Prosecutor, Chief State Prosecutor, or the Ombudsman or his/her Deputies shall give his/her prior written authority of approval before an investigating prosecutor may file or dismiss any complaint or information.
3. If he/she believes that a probable cause exists, the City/Provincial Prosecutor, Chief State Prosecutor, or the Ombudsman or his/her Deputies may disapprove an investigating prosecutor's recommendation for dismissal of a complaint. In such situation, he/she may file the information against the respondent, or direct another assistant prosecutor or state prosecutor to do so without conducting another preliminary investigation.
4. The DOJ Secretary or the Ombudsman may reverse or modify the resolution of the City/Provincial Prosecutor or the Chief State Prosecutor on his/her own discretion or upon petition by a proper party. In such situation, he/she shall direct the concerned prosecutor either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties.

Section 54. *Copies of Resolution.* The DOJ or OMB shall furnish copies of the approved resolution to the parties and the concerned member agency.

Section 55. *Motion for Reconsideration on Complaints Investigated by and subject to final approval of DOJ.* In complaints investigated by and subject to final approval of the DOJ, parties may file a motion for reconsideration within ten (10) days from receipt of the resolution. The motion shall be verified, addressed to the City/Provincial Prosecutor or the Chief State Prosecutor, together with proof of service on the opposing party. If predicated on a pending request for re-audit, the DOJ shall refer respondent's motion for reconsideration to the COA auditor/audit team or the investigating agency for comment within ten days from receipt of the letter requesting comment.

Section 56. *Motion for Reconsideration on Complaints Investigated by OMB and on complaints investigated by DOJ but subject to the approval of the OMB.* In cases investigated by the OMB, and on cases investigated by the DOJ but subject to the approval of the OMB as provided under Section 19 of these guidelines, parties may file a motion for reconsideration within five (5) days from receipt of the resolution. The motion shall be verified, addressed to the Ombudsman or his/her Deputies, together with proof of service on the opposing party. It must state clearly and distinctly the grounds relied upon in support of the motion.

Section 57. *Petition for Review.* In cases investigated by and subject to final approval of DOJ, any party may file a petition for review with the DOJ within fifteen (15) days from receipt of the resolution.^[6]

Section 58. *Motion for Reinvestigation.* The DOJ and OMB shall not entertain any motion for reinvestigation of cases already filed in court. The respondent shall instead address such motion to the court trying the case. If the court orders/directs the reinvestigation, the prosecutor shall undertake the same. The reinvestigation shall be limited, as far as practicable, to the reception and evaluation of such evidence as the accused may deem fit to present for the purpose of overturning the finding of probable cause arrived at during the preliminary investigation. The complainant shall have the right to be notified of such proceedings and to submit, in appropriate cases, proof in contravention of the evidence adduced in the re-investigation.

If the motion for re-investigation is predicated on a pending request for re-audit, the prosecutor shall refer it to the COA auditor/audit team or the investigating agency for comment and shall form part of the prosecutor's comment/opposition to be filed in court.

The City/Provincial Prosecutor, Chief State Prosecutor, or the Ombudsman or his Deputies shall approve the resolution on re-investigation. The DOJ or OMB shall furnish copies of the approved resolution on reinvestigation to the concerned member agency.

Section 59. *Procedure if Accused is Lawfully Arrested Without Warrant.*

Inquest Proceedings. Upon lawful arrest of a public official without a warrant involving an offense related to the performance of his/her official function and requiring a preliminary investigation, the prosecutor may file a complaint or information without need of such investigation, provided an inquest has been conducted in accordance with existing rules.

Waiver. Before the complaint or information is filed, the person arrested may ask for a preliminary investigation, but he/she must sign, in the presence of his/her counsel, a waiver of the provisions of Article 125 of the Revised Penal

Code, as amended. Notwithstanding the waiver, he/she may apply for bail and the investigation must be terminated within fifteen (15) days from its inception.

CHAPTER 4 PROSECUTION PROPER

Section 60. *Duties of a Trial Prosecutor Before and After Arraignment.*

Before the arraignment, the trial prosecutor shall examine the information vis-à-vis the resolution of the investigating prosecutor/graft investigation officer in order to make the necessary corrections or revisions and to ensure that the information is sufficient in form and substance.

After arraignment, the trial prosecutor shall prepare his witnesses for trial. He shall coordinate with the concerned member agency to ensure that all witnesses are presented in a logical and chronological sequence.

Section 61. *COA Lawyers as Deputized Prosecutors.* The DOJ or OMB, whenever necessary, shall deputize a COA lawyer to collaborate with the prosecutor in the active prosecution of the case.

Section 62. *Pre-Trial; Duties of the Prosecutor Before and after Pre-Trial Conference.* Before the pre-trial conference, the prosecutor should know every fact and detail of the case. This may be accomplished by interviewing the complainant and other witnesses and by thorough examination of the available documentary and physical evidence. The prosecutor should place importance on the testimony of the expert witness. For this reason, the prosecutor must work together with the concerned member agency for coordination or technical assistance.

The prosecutor must always bear in mind that he/she has to prove his/her case beyond reasonable doubt and that every act or incident constituting the elements of the crime should be proven by the testimony of qualified and competent witnesses.

After the pre-trial conference, the prosecutor shall always ensure that any agreement or admission is in writing and signed by the accused and his/her counsel.

Section 63. *Subject Matters of Pre-trial.* The pre-trial conference shall consider the following:

1. Plea-bargaining – this is a process where the defendant usually pleads guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that for a grave charge;
2. Stipulation of facts – this is the agreement of the parties on some facts admitted, some facts covered by judicial notice or on matters not otherwise disputed by them;
3. Marking of documentary evidence in advance for identification;
4. Waiver in advance of objections to admissibility of evidence;
5. List of witnesses to be presented which should be qualified by the following statement: “without prejudice to the presentation of other witnesses and documents as may be necessary in the course of the trial”; and
6. Such other matters that will promote a fair and expeditious trial.

Section 64. *Rules on Plea Bargaining²¹; Approving Authority of the City/Provincial/Chief State Prosecutor.* The City/Provincial Prosecutor or Chief State Prosecutor shall have the authority to approve plea bargaining agreements in all cases where the penalty to be imposed on the accused, as a result of the plea bargaining, is lower by not more than one degree than that prescribed by law.

Section 65. *Comment on Offer of Plea Bargaining.* Whenever practicable, the prosecutor shall require the auditor/investigator concerned to comment on the offer to enter into a plea bargaining.

Section 66. *Motions for Suspension/Issuance of Writ of Preliminary Attachment.* Immediately upon filing of the information, the trial prosecutors shall file with the proper court the corresponding motion for the suspension of the accused from office *pendente lite*. Pursuant to the provisions of Section 13 of R.A. 3019 (The Anti-Graft and Corrupt Practices Act), as amended, any incumbent public officer against whom any valid criminal information has been filed in court for the following offenses, whether as a simple or as a complex offense and in whatever stage of execution and mode of participation shall be suspended from office:

1. violation of R.A. 3019, as amended;
2. offenses defined and penalized under Title 7, Book II of the Revised Penal Code; and

3. any offense involving fraud, government or public funds, or property penalized under the Revised Penal Code and other special laws such as, but not limited to, falsification, bribery, or malversation.

In all cases involving recovery of public funds and/or property, the prosecutor shall, as soon as the trial commences, file with the court a motion for the issuance of a writ of preliminary attachment pursuant to Rule 127 of the Revised Rules on Criminal Procedure.

Section 67. *Expeditious Prosecution of Criminal Cases Filed with the Courts.* The prosecutor shall always be ready for trial with his/her witnesses who shall be subpoenaed in advance of the scheduled trial dates. The concerned member agency should ensure that the witnesses shall confer with the prosecutor before the scheduled hearing. The prosecutor shall not cause the postponement of the trial or proceedings of a criminal case except in instances where the postponement is occasioned by the absence of material witnesses or for other causes beyond his/her control or not attributable to him/her.

Section 68. *Preparation of Formal Offer of Exhibits.* The prosecutor shall safely keep his documentary and physical evidence and prepare a list thereof in the order that they have been marked as exhibits, identifying each by letter or number, describing it briefly and stating its specific purpose/s.

Section 69. *Discontinuance of Proceedings.* During the presentation of the prosecution's evidence, the prosecutor shall not cause or allow the discontinuance of the proceedings, except for compelling reasons not attributable to him.

Section 70. *Presentation of Witnesses.* The order in the presentation of witnesses shall, as far as practicable, conform to the logical sequence of events obtaining in the case on trial in order to present to the court a clear, organized, and coherent picture of the prosecution's evidence.

The rule of logical sequencing notwithstanding, a witness whose testimony is vital to the case and whose life is in danger or who may be sick/injured and may possibly die, should be made to testify as early as practicable.

Section 71. *Examination of Witness for the Prosecution.* A witness for the prosecution who is too sick or infirm to appear at the trial as directed by the order of the court, or who has to leave the Philippines indefinitely, may forthwith be conditionally examined before the judge or the court where the case is pending. Such examination in the presence of the accused, or after reasonable notice to attend the examination has been served upon him/her, will be conducted in the same manner as an examination during trial. Failure or refusal on the part of the

accused to attend the examination after notice shall be considered a waiver. The statement thus taken may be admitted on behalf of or against the accused.

Section 72. *Request for subpoena.* In all cases requiring the appearance in court of a witness for the purpose of testifying upon a report (e.g. medico-legal, necropsy, chemistry, ballistics, statement of accounts, etc.) prepared by him/her or by his/her office, the prosecutor shall indicate the reference number of the report in the request for the subpoena.

Section 73. *Support to Witnesses.* To ensure the availability of the witness/es, the member agency shall provide the necessary logistical and legal support, as well as security to its employees or former employees who are utilized as witnesses.

Section 74. *Custody of Physical and Real Evidence Pending Trial.* In keeping with the professional responsibility of the prosecutor, all the physical and real evidence, whenever feasible and practicable, shall be in the custody of the local prosecutor's office, except when the custodianship is assigned by law to another agency. The trial prosecutor shall ensure that measures are taken to provide for secondary evidence consisting of photographs, or pictures of the physical and real evidence, which evidence shall not be attached to the records of the case.

CHAPTER 5 ADMINISTRATIVE ADJUDICATION

Section 75. *Complaint.* A complaint against a public official or employee shall be in writing, subscribed and sworn to by the complainant. However, in cases initiated by the proper disciplining authority, the complaint need not be under oath.

The complaint shall be written in a clear, simple and concise language in a systematic manner as to apprise the public official or employee concerned of the nature and cause of the accusation against him/her and to enable him/her to intelligently prepare his/her defense or answer. It shall contain the following:

1. full name and address of the complainant;
2. full name and address of the person complained of as well as his/her position and office of employment;
3. a narration of the relevant and material facts which shows the acts or omissions allegedly committed by the public official or employee;

4. certified true copies of documentary evidence and affidavits of his/her witnesses, if any; and
5. certification or statement of non-forum-shopping.

In the absence of any one of the aforementioned requirements, the complaint shall be dismissed.

Section 76. *Anonymous Complaint.* Member agencies shall not entertain anonymous complaints unless the allegations have obvious truth or merit, or supported by documentary or direct evidence, or contain sufficient verifiable leads. In proper cases, the person subject of the anonymous complaint may be required to comment.

Section 77. *Withdrawal of the Complaint.* The withdrawal of the complaint does not result in its outright dismissal nor discharge the person from any administrative liability. If there is obvious truth or merit to the allegations in the complaint or available documentary evidence would tend to prove the guilt of such person, the same shall be given due course.

Section 78. *Filing of Formal Charge.* The determination as to whether or not to file a formal charge shall be governed by the applicable rules of the concerned member agencies.

Section 79. *Formal Charge.* A formal charge shall be filed after a finding of sufficient evidence. The formal charge shall contain the following:

1. specification of charge/s;
2. brief statement of material relevant facts, accompanied by certified true copies of the documentary evidence, if any, sworn statements covering the testimony of witnesses;
3. directive to answer the charge/s in writing under oath in not less than seventy-two (72) hours from receipt thereof;
4. advice for the respondent to indicate in his/her answer whether or not he/she elects a formal investigation of the charge/s; and
5. notice that he/she is entitled to be assisted by a counsel of his/her choice.

Section 80. *Answer; Conduct of Formal Investigation/Hearing; Decision; Motion for Reconsideration; Petition for Review.* The applicable rules and procedures of concerned member agencies shall be observed. (Please see Title IV)

Section 81. *Preventive Suspension.* Upon petition of the complainant or *motu proprio*, the member agency 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;

1. dishonesty;
2. oppression;
3. grave misconduct;
4. neglect in the performance of duty; or
5. if there are reasons to believe that the respondent is guilty of charges which would warrant his/her removal from the service.

Section 82. *Effect of the Pendency of an Administrative Case.* A respondent is not disqualified for promotion or maternity/paternity benefits during the pendency of an administrative case.

For this purpose, a pending administrative case shall be construed as follows:

1. when the disciplining authority has issued a formal charge;
2. in case of a complaint filed by a private person, a prima facie case is found to exist by the disciplining authority; or
3. when a formal complaint filed with the OMB has been determined to be sufficient in form or substance.

Section 83. *Recommendation for an Executive Clemency.* In meritorious cases and upon recommendation of the CSC in consultation with the agency concerned, 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 he/she may impose in the interest of the service.

Section 84. *Penalties.* In the determination of penalties to be imposed, Rule IV (on Penalties) of the Uniform Rules on Administrative Cases in the Civil Service shall apply.

Section 85. *Administrative Disabilities/Accessories to Administrative Penalties.* The following are the administrative disabilities and/or accessories that may be imposed together with the administrative penalties:

1. cancellation of eligibility;
2. forfeiture of retirement benefits;
3. disqualification for reinstatement or reemployment;
4. disqualification for promotion; and
5. disqualification from taking the Civil Service Examination.

TITLE IV – PROCEDURES

CHAPTER 1 OFFICE OF THE OMBUDSMAN

Section 86. *Fact finding; Receipt of Request for Fact-Finding, Complaint, or Official Report.* Upon receipt of a complaint, official report or request for fact-finding from a member agency, the OMB Central Records Division (CRD) or the proper sectoral/area office shall assign and indicate a CPL number (e.g., CPL-98-001) on the case folder. The CPL number shall indicate the member agency that referred the complaint, report, or request (e.g., CPL-01-002 (COA), CPL-01-002 (NBI), etc.) and the docket/record/case number of the requesting member agency (e.g., NBI-CCN-00-19874).

The CRD/sectoral/area office shall record the complaint, official report, or request, together with all the docket information previously mentioned, in its main logbook, in the separate logbook of the concerned member agency, and in its computer database.

If the request, complaint, or official report is filed with the CRD, the case record shall be immediately transmitted to the Fact-finding Intelligence and Research Office (FIRO) or to the proper area/sectoral office.

Section 87. *Referral to the Fact-Finding, Intelligence and Research Office(FIRO) or Sectoral/Area Office.* The referral to the Fact-Finding, Intelligence and Research Office (FIRO) or sectoral/area office shall be in accordance with the following procedures:

1. The FIRO/sectoral/area office shall record the complaint, request, or report in its main logbook, computer database, and separate

logbook for the member agency that made the referral, indicating therein the docket/record/case number of the latter.

2. The Assistant Ombudsman, FIRO, shall promptly transmit the complaint, request, or report to the Fact-Finding and Intelligence Bureau (FFIB). The FFIB shall record the complaint/request in its main logbook and in its separate logbook for the concerned member agency.
3. The Director, FFIB, shall immediately assign the complaint/request to an Investigator or a team of investigators.
4. The investigator/team shall evaluate and analyze the available information.
5. If the evidence warrants the immediate conduct of preliminary investigation and or administrative adjudication, the investigator/team shall assist the concerned auditors/investigators in the preparation of the affidavit-complaint/s to be signed by the duly authorized COA official/auditor. Otherwise, the investigator/team shall promptly request a conference with the concerned auditors/investigators to discuss evidentiary matters. The venue of the conference shall be at the office of a member agency convenient to most of the parties concerned.
6. If it is established in the conference that the necessary evidence could not be produced within thirty(30) days, the team/investigator shall recommend in an evaluation report that the investigation conducted pursuant to the complaint, report, or request be closed/terminated, without prejudice to the conduct of further investigation when the needed evidence becomes available.
7. Through channels, the evaluation report shall be referred to the Ombudsman or the concerned Deputy Ombudsman who may either approve or disapprove the recommendation in the said report. The investigator/team shall promptly furnish the concerned member agency with a copy of the approved evaluation report clearly stating the bases for the conclusion/s and recommendation/s made therein.
8. If there is a need to conduct fact-finding, the investigator/team shall immediately formulate an action plan that shall include, among other things, the following:
 - a. determination of the probable criminal and administrative offenses committed;

- b. documents, information, and evidence to be obtained and the sources thereof;
 - c. witnesses who will be interviewed or who shall be requested to give sworn statements;
 - d. the manner of securing the necessary documents/evidence;
 - e. the manner of approaching or securing the statements of witnesses;
 - f. setting of timetables; and
 - g. the need for technical assistance.
9. The investigator/team, within three(3) days from receipt of the complaint, report, or request, shall submit the action plan to the Director, FFIB, for his approval.
10. In the area/sectoral offices, officials, bureaus, or units shall be designated to perform the afore-cited tasks of the FIRO and the FFIB.

Section 88. *Conduct of Fact-Finding.* The investigator/team shall conduct the fact-finding in accordance with the action plan but may deviate therefrom if the circumstances so warrant.

The investigator/team shall evaluate all the evidence gathered to determine whether a formal charge/complaint may be filed with the appropriate office/s for preliminary investigation and/or administrative adjudication. The investigator/team may assist the concerned auditors/investigators in the preparation of the affidavit complaint/s to be signed by the duly authorized official/auditor/investigator of the concerned member agency if the offences to be charged are substantially based on the findings of the latter.

When the offenses to be charged are substantially based on facts not traversed in the report under consideration, the FFIB, represented by the concerned investigator/s, shall act as the nominal complainant. If the evidence is insufficient for either preliminary investigation or administrative adjudication, the investigator/team shall recommend the closure/termination of the investigation.

If technical assistance of another member agency is needed, the investigator/team shall promptly prepare the written request to be signed by the Director, FFIB, or the official of the concerned sectoral/area office.

The investigator/team shall complete its fact-finding within 60 days from receipt of the case assignment.

The investigator/team shall evaluate all the evidence gathered including the official report of another member agency. The fact-finding report shall include, among others, the following:

1. statement of the case and the authority to investigate;
2. allegations;
3. methodology and scope of investigation;
4. findings;
5. conclusion which states whether or not penal laws and/or administrative rules were violated, and in the proper case, the persons who appear to have violated such laws and rules, specifically describing their respective participation; and
6. recommendation either for the referral of the case to the Evaluation and Preliminary Investigation Bureau (EPIB), Administrative Adjudication Bureau (AAB), or to the proper sectoral office for preliminary investigation and/or administrative adjudication, or for the closure/termination of the investigation.

The investigator/team shall properly page the documents annexed to the report. If reference to a document is made in the report, the page number thereof shall be indicated either in the text of the report or in a footnote. The report shall include an index of documents, evidence, and witnesses with their addresses.

If referral of a formal complaint to the appropriate office is recommended, the investigator/team shall prepare an affidavit-complaint that must briefly state the acts constituting the offense/s committed, and an index of documents/evidence.

The Director, FFIB, or the proper sectoral/area official, shall review the findings and the formal complaint prepared pursuant thereto. Through channels, the fact-finding report shall be forwarded to the Ombudsman or the concerned Deputy Ombudsman who shall either approve or disapprove the recommendation of the FFIB/sectoral/area office.

The FFIB shall, within three (3) days from receipt of the approved fact-finding report, furnish the concerned member agency with a copy thereof.

Section 89. *Conduct of Fact-Finding by the Sectoral/Area Offices.* The concerned sectoral/area offices shall act on cases referred to it and conduct the fact-finding thereof in accordance with the afore-cited procedures when feasible and allowed by the circumstances. The proper official shall review fact-finding reports and shall execute/sign the affidavit-complaints in the proper cases. Thereafter, the cases shall be referred to the appropriate unit/s of the

sectoral/area office for preliminary investigation and/or administrative adjudication.

The FFIB/sectoral/area office shall submit to the EPIB or AAB or other proper office as many sets of affidavit-complaints and documentary annexes as there are respondents plus two (2) sets.

Section 90. *Preliminary Investigation.* The conduct of preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan and the Regional Trial Courts shall be done in the manner prescribed in Section 3, Rule 112 of the Rules of Court and Section 4, Rule II of the Administrative Order No. 07, otherwise known as the Rules of Procedure of the Office of the Ombudsman.

In addition, the following guidelines in the conduct of preliminary investigation of criminal cases shall be observed:

1. Upon receipt of a sworn criminal complaint and its supporting evidence, the OMB Investigator shall evaluate the same within three(3) working days and submit an Evaluation Report within five(5) days pursuant to Section 4, Rule II, Administrative Order No. 7 of the OMB. The Bureau Director shall immediately act on the Evaluation Report. If he approves the request for authority to conduct preliminary investigation, he shall direct the Investigator to terminate and resolve the same within sixty (60) days from the approval thereof.

In case the complaint is not ripe for preliminary investigation and other action is still to be taken pursuant to Section 4, Rule II, Administrative Order No. 7 of the OMB, the Bureau Director shall refer the Evaluation Report with his recommendation to the approving authority.

The complaint affidavit and affidavit/s of witness/es shall be in its original or duplicate original together with authenticated copies of all supporting documents attached thereto and must be in such number of copies as there are respondents plus two (2) sets.

2. The OMB Investigator shall immediately issue an order or subpoena directing the respondent/s to submit counter-affidavit/s and other countervailing evidence within ten(10) days from receipt of the Order and a copy of the complaint and all its supporting evidence. He shall also order the respondent to submit a proof of service of his counter-affidavit to the complainant who may file a reply-affidavit within a period not exceeding ten(10) days from receipt thereof.

3. If the nominal complainant is the FFIB, the latter shall notify immediately the auditors/investigator of the member agency who will act as witness/es and furnish the agency concerned of all pleadings submitted and orders, notices, and/or resolutions that may be issued. The FFIB shall coordinate with the member agency and request the production of additional documents to substantiate audit findings or strengthen the allegations in the criminal complaint.
4. If necessary, the FFIB or the proper OMB sectoral area/office shall request the member agency which prepared or participated in the preparation of the audit/fact-finding report to comment on the respondent's counter-affidavit and its supporting documents. Such comment shall be incorporated in the Reply-Affidavits that may be filed to controvert the party's counter affidavit.
5. After the submission by the parties of the requisite affidavits and their supporting evidence, the OMB Investigating Prosecutor may conduct a clarificatory hearing. The parties shall be afforded the opportunity to be present but without the right to examine or cross-examine the witness/es being questioned.
6. In proper cases, the FFIB shall notify its witness/es from the member agency who may be required to be present during the clarificatory hearing. The witness/es shall assist the FIIB to formulate relevant questions on certain facts or issues which may be submitted to the OMB investigator. If necessary, the FFIB may assign a lawyer to assist the witness/es during the clarificatory hearing.
7. The OMB Investigator shall resolve the case within sixty (60) days from the issuance of the authority to conduct the preliminary investigation. He shall submit his resolution, together with the corresponding information/s, if any, and the entire records of the case, to the approving authorities for appropriate action.
8. The concerned member agency and parties shall be furnished with copies of the approved resolution. If the resolution dismisses the complaint, the FFIB shall initiate a conference with the concerned auditors/investigators to prepare a motion for reconsideration, if they so desire.
9. A motion for reconsideration may be filed within ten (10) days from receipt of resolution, provided that only one motion is allowed. No motion for reconsideration or reinvestigation shall be entertained after the information shall have been filed in court.

Section 91. *Filing of Information.* Immediately after approval of the resolution and the Information, the OMB CRD shall forward the same together with the entire records of the case to the Office of the Special Prosecutor if the criminal case falls within the exclusive jurisdiction of the Sandiganbayan^[a], or to the Office of the City/Provincial Prosecutor for filing of the Information, if within the jurisdiction of the regular courts.

Cases falling under the jurisdiction of the OMB which are cognizable by the regular courts^[a], including those subject to the Rules of Summary Procedure may only be filed with the courts through an Information duly approved by the Ombudsman or the Deputy Ombudsman, as the case may be.

The OMB CRD shall furnish the FIIB and the concerned member agency with copies of the endorsement and Information referred to the Sandiganbayan of the regular courts.

Section 92. *Prosecution Proper.* The Special Prosecution Officer or Deputized Prosecutor shall confer with the witness/es at least one (1) week before any scheduled hearing.

Resolutions and review resolutions of the reinvestigating prosecutor and the deputized city/provincial prosecutor, respectively recommending the following shall be the subject to the approval of the Ombudsman or his Deputies, as the case may be:

1. dismissal of the case;
2. withdrawal of the complaint or information filed in court; and
3. substantial amendments to the complaint or information such as, but not limited to:
 - a. charging an offense different from or lesser than that originally charged;
 - b. downgrading the degree of participation of an accused;
 - c. excluding an accused from the original complaint or information; and
 - d. including other persons as additional accused.

In all cases, the member agencies initiating the case shall be furnished with a copy of the approved resolution. No motion praying for such dismissal, withdrawal or amendment of the original complaint or information shall be filed in court without the prior written approval of the Ombudsman or his Deputies.

The following documents shall be transmitted to the Ombudsman or his Deputies, together with the Resolution of the reinvestigating prosecutor:

1. records of the reinvestigation proceedings;
2. the original and a copy of the resolution/recommendation of the reinvestigating prosecutor; and
3. the original and a copy of the motion for dismissal, withdrawal or amendment, as the case may be, of the complaint or information, duly signed by the reinvestigating prosecutor.

Resolutions of the reinvestigating prosecutor recommending the remand of the case to the trial court for further proceedings under the original complaint or information, concurred or approved by the City/Provincial Prosecutor, as well as resolutions of City/Provincial Prosecutors disapproving recommendations of their assistants for the dismissal, withdrawal or amendment of the original complaint or information, need not be submitted to the OMB for further action.

COA Lawyers as collaborating prosecutors. The OMB, whenever necessary, shall deputize a COA lawyer as prosecutor. The COA lawyers shall coordinate and collaborate with the Office of the Special Prosecutor or DOJ prosecutors in the active prosecution of the case.

Section 93. *Plea Bargaining*¹⁰¹. City/Provincial Prosecutors are authorized to approve plea bargaining agreements entered into, concurred or consented to by the prosecutors under them in all cases where the penalty to be imposed on the accused as the result of the plea bargaining is lower by not more than one degree than that prescribed by law for the cognate offense charged in the complaint. Provided, that where the offense involves recovery of public funds or property, the same shall be first restituted in full and/or returned, as the case may be.

In all other cases, the prior written approval of the Ombudsman or his/her Deputies shall be secured.

Section 94. *Documents Required in Plea Bargaining.* In case of plea bargaining, the following documents shall be transmitted to and approved by the Ombudsman or his Deputies:

1. written offer of the accused to enter a plea bargaining stating therein the cognate offense to which he/she intends to enter a plea of guilt;
2. recommendation of the trial prosecutor stating, among others the reason justifying the acceptance of the offer of the accused; and

3. the original and a copy of the manifestation of consent to the plea bargaining offer of the accused duly signed by the trial prosecutor and the offended party and the latter's counsel, if any.

Section 95. *Motions for Suspension/Issuance of Writ of Preliminary Attachment.* After arraignment, the trial prosecutors, immediately upon filing of the information, shall file with the proper court the corresponding Motion for Suspension of the accused from office *pendente lite*. Pursuant to the provisions of Sec. 13 of Republic Act No. 3019 (The Anti-Graft and Corrupt Practices Act), as amended, any incumbent public officer against whom any valid criminal information has been filed in court for the following offenses, whether as a simple or as complex offense and in whatever stage of execution and mode of participation shall be suspended from office:

1. violation of R.A. 3019, as amended;
2. offenses defined and penalized under Title 7, Book II of the Revised Penal Code; and
3. any offense involving fraud upon government of public funds or property penalized under the Revised Penal Code and other special laws such as, but not limited to, falsification and bribery or malversation.

In all cases involving recovery of public funds and/or property, the prosecutor shall, as soon as the trial commences, file with the court a motion for the issuance of a writ of preliminary attachment pursuant to Sections 1 and 2, Rule 127 of the Revised Rules on Criminal Procedure.

Section 96. *Administrative Complaint; Filing of Administrative Complaint.* Upon receipt of a written complaint under oath and accompanied by affidavits of witnesses and other evidence in support of the charge, the Chief of the OMB CRD shall require the complainant to submit a certification of non-forum shopping. Non-compliance with this requirement shall cause the outright dismissal of the administrative complaint.

The Ombudsman or the concerned deputy Ombudsman, on his/her initiative or on the basis of a complaint originally filed as a criminal action or a grievance complaint or request for assistance, may order the conduct of an administrative proceeding.

Section 97. *Evaluation of the Administrative Complaint.* The OMB Investigator shall promptly evaluate the complaint and submit an Evaluation Report within five (5) days from receipt thereof. The recommendation may include the following:

1. outright dismissal on grounds enumerated in Section 20 of Administrative Order No. 7;
2. referral to the concerned member agency; and
3. administrative adjudication by the AAB of the OMB Central Office or by the concerned sectoral/area office.

Section 98. *Conduct of Administrative Adjudication.*

1. Upon authority, the OMB Investigator shall issue an order directing the respondent to file a counter-affidavit and other countervailing evidence within ten (10) days from receipt thereof. The OMB Investigator shall furnish the respondent(s) with a copy of the complaint and its supporting evidence. The respondent shall submit proof of service to the complainant of his counter-affidavit and other evidence. The complainant may file reply-affidavit(s) within ten (10) days from receipt of the respondent's counter-affidavit.
2. The OMB Investigator shall evaluate the affidavit/s and supporting evidence submitted by the parties. If there is no sufficient cause to warrant further proceedings, the case may be dismissed or referred to another bureau or office for further action. Otherwise, the investigator shall summon the parties to a preliminary conference.
3. During the preliminary conference, the investigating officer shall determine whether the parties desire a formal investigation or are willing to submit the case for resolution based on the evidence on record and such other evidences the parties will present at such conference.
4. After the preliminary conference, the investigator shall issue an order reciting the matters taken up during the conference, including the nature of the charge, stipulation of facts, definition of the issues, identification and marking of exhibits, limitation in the number of witnesses, and such other matters as would expedite the proceedings.
5. The Investigator shall notify the parties at least five (5) days before the date of any scheduled hearing of the case. If any or both of the parties fail to appear at the hearing, such failure is not necessarily a cause for the dismissal of the complaint. The investigator shall allow a party who appears on the scheduled date of hearing to

present his/her evidence in the absence of the adverse party who was duly notified of the hearing but failed to attend.

6. The Investigator shall allow to testify at the hearing only witnesses who have submitted affidavits served on the adverse party at least five (5) days before the date when he/she is presented as a witness.
7. The affidavit of any witness shall constitute his/her direct testimony, subject to cross-examination, re-direct examination and re-cross-examination.
8. The parties shall have the right to assistance of counsel and the right to the production of evidence through the compulsory process of *subpoena duces tecum*.

Section 99. Preventive Suspension of Respondent; Grounds. Pending investigation, the Investigator may recommend to the Ombudsman or the concerned Deputy Ombudsman for the issuance of an order of preventive suspension against the respondent for not more than six (6) months.

The grounds for preventive suspension are the following:

1. if, in the judgment of the Ombudsman or his/her Deputy, the evidence of guilt is strong;
2. the charge against him/her involves dishonesty, oppression or gross misconduct or neglect in the performance of duty;
3. the charge would warrant removal from the service; and
4. the respondent's continued stay in office may prejudice the case filed against him/her.

Section 100. Implementation of the Preventive Suspension Order. The concerned member agency head shall inform the OMB of the action taken on the implementation of the preventive suspension order within ten (10) days from receipt thereof.

Section 101. Reinstatement of Respondent Preventively Suspended. If the administrative investigation is not terminated within the period the respondent is suspended, the latter 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.

Section 102. *Resolution after Termination of Hearing.* The investigating officer shall submit not later than thirty (30) days after the termination of the hearing a resolution containing his/her findings and recommendation for appropriate action of the Ombudsman or the Deputy Ombudsman.

The approved resolution shall constitute the decision in the case. The CRD Chief or the records officer of the concerned sectoral/area office shall serve a copy thereof to the parties and the head of concerned member agency where the respondent is presently connected for the implementation of the resolution.

The concerned agency head, upon receipt, shall inform the OMB of the action taken on the resolution.

Section 103. *Effect and Finality of Decisions.* All provisional orders of the OMB are immediately effective and executory.

A decision shall be final and unappealable in the following cases:

1. where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary;
2. after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for certiorari shall have been filed by him/her as prescribed in Section 7 of RA 6770; and
3. findings of fact by the OMB when supported by substantial evidence are conclusive.

Section 104. *Motion for Reconsideration/Reinvestigation.* The Investigator shall entertain only one motion for reconsideration or re-investigation whenever allowable and filed within ten (10) days from receipt of the decision by the respondent on any of the following grounds:

1. new evidence that materially affects the order, directive or decision has been discovered; and
2. errors of facts or law or irregularities prejudicial to the interest of the movant have been committed.

The Investigator shall resolve the motion for reconsideration or re-investigation within five (5) days from receipt thereof.

Section 105. *Appeal.* In all administrative cases, any order directive, or decision of the OMB may be appealed to the Court of Appeals⁽¹¹⁾ by filing a petition for review within ten (10) days from receipt of the written notice of the order, directive, or decision or denial of the motion for reconsideration in accordance with Rule 43 of the Rules of Court.

An appeal shall not stop the decision from being executory, 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/she wins such appeal and shall be paid his/her salary and such other emoluments during the pendency of the appeal⁽¹²⁾.

CHAPTER 2 COMMISSION ON AUDIT

Section 106. *Request for Fraud Audit.* All requests for special audit coming from a member agency shall insofar as practicable be given utmost priority and acted upon with dispatch. Where action on the request for special audit cannot be immediately taken by COA due to its present workload, it shall inform the requesting member agency accordingly. In the event the requesting member agency shall decide to pursue the investigation by assigning its own investigator to the case, COA shall make all relevant records and documents available for such investigation.

When a respondent in a complaint filed by a COA Auditor or other authorized COA official with the OMB and DOJ files an appeal with the COA, the latter, through its Legal Office, shall advise the OMB and DOJ accordingly. At its own discretion, the OMB and DOJ may either proceed with its own preliminary investigation of the case or defer further action thereon until the appeal is decided upon by the COA.

If the COA report is the basis of a complaint filed by a party other than the COA, and the person adversely affected by the report seasonably files an appeal or motion for reconsideration of the COA findings, the same rule, as above described, shall apply.

No request for reinvestigation/re-audit of cases already filed in court shall be entertained unless upon order of such court.

When a respondent in a complaint filed by a COA Auditor or other COA authorized official with the OMB files a request for re-audit with the OMB, the latter shall refer the request to COA. COA shall inform the OMB of its action on the request for re-audit. However, in cases involving cash shortages discovered by COA in the conduct of cash examination, no request for re-audit may be granted by the OMB.

Section 107. *Receipt of Request for Special Audit.* Generally, all complaints, referrals, requests for special audit shall be addressed to the Director, Special Audit Office (SAO), for agencies in the NCR or to the concerned Director, COA Regional Office (RO). However, if complaints or requests for special audit are addressed to any of the COA Central Operating Offices (CO), the request/complaint may be acted upon by them or they may refer the same to the SAO or the concerned COA Regional Offices for action.

Upon receipt of the complaint/request, the SAO or RO shall conduct an initial evaluation to determine whether there is sufficient basis for the conduct of a special audit. If there is sufficient basis, the SAO or RO may create a Special Audit team or the SAO may refer the case to the RO for appropriate action or *vice versa*. However, referral to SAO by the RO of a request for audit shall be made only in cases when the team from the RO cannot function independently.

The SAO or RO shall maintain a separate logbook for requests/complaints coming from the OMB. The logbook shall indicate the date of entry, nature of the case, and reference/docket number of the member agency.

Section 108. *Creation of Audit Teams.* The Director, SAO, CO or RO may create as many audit teams as are necessary to respond to the member agency's request for special audit.

Should the Director be unable to organize a sufficient number of audit teams for all the requests for special audit due to lack of personnel, funds or time, audit priority shall be based on the seriousness of the allegations in the complaints.

Whenever practicable, the requesting member agency shall assign its own investigator to every audit team created to conduct the fact-finding.

Section 109. *Conduct of Special Audit.* The conduct of special audit shall be the concurrent responsibility of the SAO and RO.

The audit shall be conducted in accordance with the applicable laws, rules and regulations. The audit shall be completed within sixty (60) days and may be extended as the exigencies of the service may require.

In all special audits conducted by the COA RO, the Regional Director shall submit a monthly report to the SAO of all special audits conducted for purposes of monitoring.

Whenever necessary, the member agency investigator assigned shall be responsible for the issuance and service of *subpoenae*.

Section 110. *Gathering of Evidence.*

1. Documentary – The audit team shall retrieve all documentary evidence from the audited agency and shall issue the necessary receipt therefor. In case of refusal, the team leader shall issue a *subpoena duces tecum*. Non-compliance with the *subpoena* shall be a ground for the filing of appropriate administrative charges with the CSC, OMB or DOJ.
2. Testimonial – The team shall take affidavits or sworn statements of witnesses.
3. Physical – The team shall obtain the necessary physical evidence.

Section 111. *Technical Assistance.* Whenever necessary, the audit team may request technical, legal and other assistance from concerned agencies such as the NBI, Department of Science and Technology, University of the Philippines, Bureau of Food and Drugs, etc.

Reporting; Contents. The report shall contain, among other things, the following:

1. background of the agency;
2. statement of the case and the authority to audit;
3. allegations of fraud and/or legal infractions;
4. methodology and scope of investigation;
5. findings; and
6. conclusion, which states whether penal laws and/or administrative rules were violated, and in the proper case, the persons who violated such law and rules.

Section 112. *Upon Completion of the Report.* The audit team shall require the audited agency to submit its comment on the audit findings within ten (10) days from receipt thereof. Failure of the audited agency to submit such

comments shall be deemed a waiver thereof and the audit findings shall be submitted for review. The audit team shall submit its report within thirty (30) days from completion of the audit to the team supervisor. The latter shall review and endorse the report to the concerned Director of the COA CO and RO within ten (10) days. The Director shall transmit the report to the head of the audited agency. However, Special Audit Unit (SAU) reports or copies thereof intended for the head offices of the audited agencies shall be coursed through the Director of the COA CO who has jurisdiction over the head office of the agency concerned. Also, reports or copies intended for the Office of the President, the House of Representatives and the Senate shall be transmitted under the signature of the Chairman.

Section 113. *Transmittal of Report to the Office of the Ombudsman.* If the findings warrant the institution of criminal and/or administrative action against officials or employees of the audited agency, the COA, through its representatives, shall transmit to the OMB a certified true copy of the report of the audit team, its annexes, and the affidavit of the audit team, which shall contain, among other things, the following:

1. facts of the case;
2. laws, rules and regulations violated;
3. names and addresses of the persons who may be liable, their official positions, offices and their participation; and
4. a statement incorporating by reference the audit report and its annexes.

Section 114. *Auditors as Witnesses in the Prosecution of the Case.* For the successful prosecution of the case, the Auditors who conducted the audit must preserve the evidence obtained in audit, coordinate closely with the Prosecutor, appear as witnesses and comply strictly with the requirements contained in the *subpoena* issued to them. They must bring with them all the pertinent documents and papers gathered in the course of the audit. The concerned COA director shall inform the Prosecutor of the whereabouts of the auditors who have been reassigned to other offices or separated from the service, to ensure their appearance in court.

The COA shall provide all the support authorized by law to auditors who are utilized as witnesses.

Section 115. *COA Lawyers as Collaborating Prosecutors.* The COA upon request and/or whenever necessary, shall assign a lawyer who shall coordinate and collaborate with the OSP or DOJ prosecutors in the active prosecution of audit-related cases. In appropriate cases, the Office of the Special

Prosecutor and the DOJ may deputize COA lawyers to prosecute a case or assist therein.

Section 116. *Filing of Cases.* All cases arising from criminal offenses discovered in the course of audit shall be filed directly with the OMB and the DOJ pursuant to OMB-DOJ Joint Circular No. 95-001.

Section 117. *Offices and Officials Authorized to File Cases.*^[13]

Regional Offices.

1. When the offense is committed in a national or corporate agency, including self-governing boards or commissions, the Regional Director shall initiate the filing of the criminal proceedings.
2. If the offense is committed in a local government unit, the case shall be filed by the Provincial or City Auditor concerned. However, in local government units where the Provincial Supervision Scheme is implemented, malversation cases under Article 217 of the Revised Penal Code pertaining to national, local and/or corporate agencies, except in the banking sector, shall be filed by the Provincial Auditor concerned with the appropriate office of the OMB or the City/Provincial Prosecutor, as the case may be. When the malversation is committed in a banking institution, the Provincial Auditor shall transmit the pertinent report and supporting documents to the concerned RO Director for further evaluation and filing of the case by the latter with the OMB or the City/Provincial Prosecutor.

Metropolitan Manila Area

1. In the Metropolitan Manila area or in instances where the offense is discovered in the course of a special audit or investigation conducted by the SAO or any other Operating Offices of Special Audit Group created for the purpose of conducting fraud audit, the filing of the necessary criminal complaint shall be initiated by the COA Legal Office.
2. The COA General Counsel shall designate any lawyer of the Legal Office or cause the deputation of the appropriate lawyer in the COA CO or auditing units to handle the case. Those designated as herein provided shall be under the direct supervision and control of the General Counsel.
3. The Chairman may, in his discretion, order any other officer or COA office to file the appropriate criminal charges. Those

designated by the Chairman as herein provided shall be under the direct supervision and control of the General Counsel.

CHAPTER 3

CIVIL SERVICE COMMISSION

Section 118. *Action on the Complaint.* Upon receipt of a complaint which is sufficient in form and substance, the disciplining authority shall require the person complained of to submit a counter affidavit/comment under oath within three (3) days from receipt.

If the complaint is filed outside the jurisdiction of the CSC as defined in the Guidelines, the CSC shall refer said complaint to the OMB.

Section 119. *Preliminary Investigation.* Preliminary investigation involves the ex parte examination of records and documents submitted by the complainant and the person complained of, as well as documents readily available from other government offices. During said investigation, the parties are given the opportunity to submit affidavits and counter-affidavits. Failure of the person complained of to submit his counter-affidavit shall be construed as a waiver thereof.

Thereafter, if necessary, the parties may be summoned to a conference where the investigator may propound clarificatory and other relevant questions.

Upon receipt of the counter-affidavit or comment under oath, the disciplining authority may now determine whether a prima facie case exists to warrant the issuance of a formal charge.

A fact-finding investigation may be conducted further or prior to the preliminary investigation for the purpose of ascertaining the truth. A preliminary investigation necessarily includes a fact-finding investigation.

For this purpose, preliminary investigation maybe entrusted by the Commission to lawyers of other agencies.

Section 120. *Duration of the Investigation; Investigation Report; Decision or Resolution after Preliminary Investigation.* A preliminary investigation shall commence not later than five (5) days from receipt of the complainant by the disciplining authority and shall be terminated within thirty (30) days thereafter.

Within five (5) days from the termination of the preliminary investigation, the investigating officer shall submit the Investigation Report and the complete records of the case to the disciplining authority.

If a prima facie case is established during the investigation, a formal charge shall be issued by the disciplining authority. A formal investigation shall follow.

In the absence of a prima facie case, the complaint shall be dismissed.

Section 121. *Formal Charge.* When the CSC finds the existence of a prima facie case, the respondent shall be formally charged. He/She shall be furnished with copies of the complaint, sworn statements, and other documents submitted by the complainant, unless he/she had already received the same during the preliminary investigation. The respondent shall be given at least three (3) working days from receipt of said formal charge to submit his/her answer under oath, together with the affidavits of his/her witnesses and other evidence and a statement indicating whether or not he/she elects a formal investigation. He/She shall also be informed of his/her right to assistance of a counsel of his/her choice. If the respondent has already submitted his/her comment and counter-affidavits during the preliminary investigation, he/she shall be given the opportunity to submit additional evidence.

The CSC shall not entertain requests for clarification, bills of particulars or motions to dismiss that are obviously designed to delay the administrative proceedings. If the respondent submits any of these pleadings, the same shall be considered as an answer and shall be evaluated as such.

Section 122. *Conduct of Formal Investigation.* Although the respondent does not request a formal investigation, one shall nevertheless be conducted by the disciplining authority 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 five (5) days nor later than ten (10) days from receipt of the respondent's answer. Said investigation shall be finished within thirty (30) days from the issuance of the formal charge or the receipt of the answer unless the period is extended by the disciplining authority in meritorious cases.

For this purpose, the Commission may entrust the formal investigation to lawyers of other agencies.

Section 123. *Failure to File an Answer.* If the respondent fails or refuses to file his/her answer to the formal charge within five (5) days from receipt

thereof, he/she shall be considered to have waived his/her right thereto and formal investigation may already commence.

Section 124. *Continuous Hearing until Terminated; Postponement.* Hearing shall be conducted on the hearing dates set by the hearing officer or as agreed upon during the pre-hearing conference.

Where no pre-hearing conference is conducted, the parties, their counsel, their witnesses, if any, shall be given a notice of at least five (5) 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. A party shall be granted only three (3) postponements upon oral or written request. A fourth postponement maybe granted only upon written request and subject to the discretion of the disciplining authority.

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/her right to be present and to submit evidence in his/her favor during those hearings.

Section 125. *Formal Investigation Report.* Within fifteen (15) 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 with the disciplining authority. The complete records of the case shall be attached to the Report of Investigation.

Section 126. *Decision after Formal Investigation.* The disciplining authority shall render his decision on the case within thirty (30) days from receipt of the Report of Investigation.

The CSC shall immediately furnish the concerned member agency with a copy of the decision.

CHAPTER 4

NATIONAL BUREAU OF INVESTIGATION

Section 127. *Receipt of Complaint or Request for Investigation of Graft Cases.* Upon receipt of the complaint or request addressed to the NBI Director or to any of its Regional Directors, the Complaints and Records Division (CRD) of the NBI Main Office Manila or any of its Regional Offices, as the case may be,

shall record the complaint or request in its main logbook. If the request comes from any member agency, a separate logbook shall be maintained indicating therein the member agency that referred the complaint or request, and the case or record number.

Thereafter, the CRD shall immediately transmit the case folders to the Office of the Director or to the concerned Regional Director for appropriate action.

Section 128. *Referral of the Complaint Received by NBI Manila Office.* Upon receipt of the case folder from the CRD, the NBI Director shall promptly refer the same to the Deputy Director for Special Investigative Services (DD SIS), if the situs of the offense is within the National Capital Region, or to the Deputy Director for Regional Operations (DDROS), if the offense is committed within the jurisdiction of any of its regional offices.

Section 129. *Evaluation of Complaint/Request.* Any complaint or request for investigation emanating from a member agency shall be evaluated within two (2) days from receipt thereof, by the DD SIS or the DDROS, as the case may be. After evaluation, the DD SIS shall assign the case to the Chief of the Anti Graft Division (AGD) where the complaint or request will be acted upon with dispatch. The DDROS, on the other hand, shall immediately refer the case to the concerned NBI Regional Office for appropriate action.

If the case is referred by the DD SIS, the Chief of the Anti Graft Division shall immediately assign the case to an Agent or Special Investigator or he may create a team of Agents and/or Special Investigators to investigate the case. Referral of the complaint received by the regional offices. In case the complaint or request is assigned to a regional office by the DDROS, or is directly filed by any member agency with such regional office, the Regional Director concerned shall immediately assign the case to an Agent or a Special Investigator or to a team of Agents and/or Special Investigators.

Section 130. *Request for Support Personnel from Any IA Member.* If necessary, the concerned Regional Director or the Chief of the investigating unit, through channels, may request for additional support personnel or investigators coming from member agencies upon prior approval of the concerned member agency head. In which case, the NBI investigating team leader shall act as the supervisor of the additional support personnel coming from any member agency.

Section 131. *Conduct of Investigation.* The investigation shall be conducted in accordance with existing rules and regulations. Upon request of the team leader, the concerned Regional Director or the Chief of the unit of the investigating team shall issue *subpoena* or *subpoena duces tecum* to any person who may either be the complainant/witness, or the subject of the investigation, or who has in his/her custody public documents that are needed by the investigating

team for evidentiary purposes. Should the person subpoenaed appears on the scheduled date, any member of the investigating team including the support group coming from the member agency may take the sworn statement of the person subpoenaed, if necessary.

Section 132. *Reporting.* Within ten (10) days after termination of the investigation, the team leader shall submit an investigation report on the case to the concerned Regional director or to the Chief of the investigating unit. The investigation report shall be forwarded to the Chief of the Legal and Evaluation Division (LED) for review and evaluation. It shall contain the following:

1. all documentary evidence gathered during the investigation such as Sworn Statements, Technical Reports, etc; and
2. summary statement of the facts of the case, the evidence gathered by the investigators, the findings and conclusion as well as the recommendation of the investigating team.

Section 133. *Filing and Notice.* The Chief, LED, shall complete his review and evaluation within 30 days and submit his report to the Director for appropriate action. In proper cases, the NBI Director shall refer the case to the DOJ or OMB within five (5) days for preliminary investigation. The referral shall include, among others things, the complaint-affidavit of the investigating team. The Chief LED shall notify within five (5) days the head of the concerned member agency on the action taken by the NBI on the complaint or request.

Section 134. *During Preliminary Investigation.* During the Preliminary Investigation before the DOJ or OMB, the investigating team shall submit all original documents pertinent to the case to the assigned DOJ prosecutor or OMB investigator. In which case, the prosecutor or investigator shall issue an acknowledgment receipt to the investigating team.

Section 135. *During Court Trial.* The NBI investigator or investigating team shall act as witness/es for the prosecution during the trial of the case. To compel their appearance, the NBI Director shall enjoin under pain of administrative sanctions all NBI agents or Investigators to appear before the court when properly subpoenaed to act as witness/es.

Section 136. *Service of Warrant of Arrest.* If the court issues a warrant of arrest against the accused, the NBI shall serve the same.

Section 137. *Request for Technical Assistance.* Whenever necessary, any member agency shall prepare a written request for examination of questioned documents and/or signatures thereon, duly signed by the authorized official concerned addressed to the NBI Director, attention the Office of the Deputy Director for Technical Services (ODDTS). The Chief, Anti-Graft Division,

shall be furnished with a copy of said request. The NBI shall indicate on the receiving copy the probable date when the result of the examination may be made available to the requesting office. In case the results are not made available on the indicated date, the NBI shall inform the requesting agency when the results will be available.

Section 138. *Surveillance.* Technical expertise in surveillance shall be provided by the NBI. The objective is to identify the perpetrator, determine whereabouts of the proceeds of the crime, and the *modus operandi* of the perpetrator.

Section 139. *Questioned Document Examination.* Technical assistance in the determination of the authenticity and genuineness of the documents and/or signatures thereon may be sought from experts of the NBI.

Section 140. *Entrapment.* The commission of graft cases is prevented by the NBI through entrapment operations. A successful entrapment operation results in the arrest of the offenders and the subsequent filing of criminal information against them in the appropriate court.

The procedures for entrapment operations are as follows:

1. Upon receipt of any information about an incident or situation that may necessitate an entrapment operation or warrantless arrest, any member agency may request the NBI to investigate the case and undertake the operation to apprehend the offender *en flagrante delicto*. Rule 113 Section 5 of the Revised Rules on Criminal Procedure provides, among others things, the following grounds when a peace officer or a private person, without a warrant, may arrest a person:
 - a. when, in his presence, the person to be arrested has committed, is actually committing or is attempting to commit an offense; or
 - b. when an offense has in fact just been committed and he has personal knowledge of facts indicating that the person to be arrested has committed it.
2. The requesting member agency, in coordination with the NBI, shall provide the latter with all information relevant to the case.
3. The NBI team assigned to investigate the case shall first cause the taking of the sworn statements of the complainant and/or his witness/es to determine the veracity of the complaint and to ascertain whether or not circumstances warrant the conduct of an entrapment.

4. If an entrapment operation has been decided, the NBI team shall conduct a surveillance of the area where the operation shall take place. Before the team proceeds to the area of operation, they must ensure that the entrapment money has been properly marked and dusted with fluorescent powder by a chemist at the Forensic Chemistry division of the NBI.
5. During the entrapment proceedings, it is necessary that a photographer is around to record or take pictures of the event specifically before, during and after the apprehension of the suspect. Upon arrest of the suspect, the NBI team shall immediately cause the examination of the apprehended suspect for possible presence of fluorescent powder on any part of his body. Such examination may be conducted either at the Forensic Chemistry division of the NBI Office in Manila, or on site or at the area of operation if a forensic chemist is part of the NBI team who conducted the entrapment operation.
6. The NBI team shall prepare all documents necessary for the referral of the case for inquest proceedings or preliminary investigation before the OMB, the Office of the Special Prosecutor, the City/Provincial Prosecutor or the DOJ, as the case may be. The Transmittal Letter duly approved by the Director or any of his authorized signatories shall contain, among other things, the following:
 - a. Affidavit of Arrest of the Agents or Special Investigators who arrested the suspect;
 - b. Booking Sheet and Arrest Report;
 - c. Sworn statement of the complainants and witnesses;
 - d. Forensic Chemistry Report; and
 - e. Photographs of the entrapment operation.
7. The NBI shall strictly observe the reglementary period prescribed in Art. 125 of the Revised Penal Code (12, 18 or 36 hours from arrest) for the filing of the information with the appropriate court against persons arrested without a warrant.
8. If the arrested suspect is occupying a position with salary grade 27 or above, the Transmittal Letter for inquest proceedings or preliminary shall be forwarded to the Office of the Special Prosecutor. If the arrested suspect is occupying a position below salary grade 27, then the Transmittal Letter shall be forwarded to the City/Provincial Prosecutor of the place where the arrest was made or before the DOJ in Manila, as the case may be.

CHAPTER 5

DEPARTMENT OF JUSTICE

Section 141. *Preliminary Investigation; Complaint.* Any offended party or competent person/law enforcement agency (NBI,PNP, etc.) or member agency may directly file a complaint against any public official either with the DOJ or OMB.

Section 142. *Contents of the Complaint.* The complaint shall contain the following:

- a. full name/s and complete address/es (home or office) of the complainant/s and his witness/es.
- b. full name/s and complete address/es (home or office) of the respondent/s
- c. the offense charged, the place and time of commission and all pertinent supporting documents and evidence; and
- d. certificate of non-forum shopping.

Section 143. *Affidavits of Witnesses and Supporting Documents.* The complaint shall be accompanied by the affidavits of witnesses, as well as other supporting documents and evidence to prove the allegations in the complaint, in such number of copies as there are respondents plus two (2) sets.

The complaint and affidavits of witnesses shall be in the original duplicate, together with the attached authenticated copies of all supporting documents.

The complaint and affidavits of witnesses shall be sworn before the City/Provincial Prosecutor or their assistants, the State Prosecutor, or other public officials authorized to administer oaths, or in their absence or unavailability, a notary public, who must certify that he/she personally examined the affiants and is satisfied that they voluntarily executed their affidavits.

Section 144. *Initial Action on the Complaint.* Upon receipt of the complaint, the investigating prosecutor shall evaluate the same within ten (10) days from receipt thereof. He shall, among other things, determine whether the case is within the original jurisdiction of the Sandiganbayan or with the regular courts.

In cases falling within the original jurisdiction of the Sandiganbayan, the DOJ shall forward the same to the Ombudsman for appropriate action.

If he finds no ground to continue with the preliminary investigation, the investigating prosecutor shall dismiss the same. Otherwise, he shall issue *subpoena* to the respondent, attaching thereto a copy of the complaint together with the affidavits of witnesses and other supporting documents directing him to file his counter-affidavit and other controverting evidence within ten (10) days from receipt of the same, copies of which shall be furnished by the respondent to the complainant.

Only a counter-affidavit subscribed and sworn to by the respondent before a public prosecutor, or government official authorized to administer oath, or, in their absence or an availability, a notary public, who must certify that he/she personally examined the affiants and that he/she is satisfied that they voluntarily executed and understood their affidavits. A memorandum, manifestation, or motion to dismiss signed by the counsel cannot take the place of a counter-affidavit. Thus, a respondent relying on his counsel's manifestation, memorandum, or motion to dismiss is deemed to have not controverted complainant's evidence. However, if the respondent himself certifies the same, it may be considered as his/her counter-affidavit.

Section 145. *Grounds for the Dismissal of the Complaint.* The following are the grounds for the dismissal of the complaint:

1. the offense charged in the complaint was committed outside the territorial jurisdiction of the office of the investigating prosecutor (applicable in cases where the investigating prosecutor is the City/Provincial Prosecutor or their assistants conducting the preliminary investigation);
2. the offense charged had already prescribed at the time of the filing of the complaint;
3. the acts and/or omissions alleged in the complaint and/or supporting affidavits do not sufficiently show that a criminal offense or violation of a penal law has been committed; and
4. the complaint and the supporting affidavits are unsigned and/or have not been duly subscribed under the Rules on Criminal Procedure.

Section 146. *Motion to Dismissal/Bill of Particulars.* The filing of a motion for the dismissal of the complaint or for the submission of bill of particulars shall not suspend or interrupt the running of the period for the submission of the counter-affidavits and other supporting documents.

All the grounds for the dismissal of the complaint, as well as objections to the sufficiency thereof, shall be alleged or incorporated in the counter-affidavits and shall be resolved by the investigating prosecutor jointly on the merits of the case.

Section 147. *Counter-Affidavit; Extension of time to File Counter-Affidavit.* No motion for extension of time to submit counter-affidavit/s shall be allowed or granted by the investigating prosecutor except when the interest of justice demands that the respondent be given reasonable time or sufficient opportunity to:

- (a) engage the services of counsel to assist him in the preliminary investigation;
- (b) examine or verify the existence, authenticity or accuracy of voluminous records, files, accounts, or other papers or documents submitted in support of the complaint; or
- (c) undertake studies or research on complicated or technical questions or issues of law and of facts attendant to the case under investigation.

The extension of time to submit a counter-affidavit for any of the reasons aforesaid shall not exceed ten (10) days. The City/Provincial Prosecutor, the Chief State Prosecutor, the Ombudsman or his Deputies may authorize additional extensions.

Section 148. *Personal Service of Documents by Investigating Prosecutor.* Whenever circumstances warrant and to prevent the loss of documents in the course of the service of a *subpoena* through ordinary modes, the investigating prosecutor may require the respondent or other parties to appear before him on a designated date, time and place and then and there personally furnish them with the copies of the complaint, supporting affidavits, and evidence submitted by the complainant.

Failure on the part of the respondent or his/her counsel/representative to appear before the investigating prosecutor to obtain copies of the complaint, supporting affidavits, and other documents despite receipt of notice of subpoena shall be considered a waiver or forfeiture of respondent's right to be furnished copies thereof, as well as to examine all other evidence submitted by the complainant.

If the respondent or other parties are residing in distant places, the investigating prosecutor shall issue and send the *subpoena*, together with copies of the complaint, supporting affidavits and other documents by registered mail with return card.

Section 149. *Reply-Affidavits and Rejoinders.* The investigating prosecutor shall not allow or require the filing or submission of reply-affidavit and/or rejoinders, except where new issues of acts or questions of law, material and substantial in nature, are raised or invoked in the counter-affidavit or without the need for conducting another preliminary investigation. And if the case falls within the original jurisdiction of the *Sandiganbayan*, he shall forward the entire records of the case together with the resolution and pertinent information thereto, if any, to the OMB for appropriate action.

If the OMB agrees or concurs with the recommendation of the investigating prosecutor finding probable cause for the offense charged, the information together with resolution shall be filed with the *Sandiganbayan*.

Section 150. *Clarificatory Questions.* The investigating prosecutor may set a hearing to propound clarificatory questions to the parties or their witnesses if he believes that there are other matters he need to inquire personally. In said hearing, the parties shall be afforded the opportunity to be present but without the right to cross-examine. If they so desire, they may submit written questions to the investigating prosecutor who may propound such questions to the parties or witnesses concerned.

Section 151. *Resolution.* The investigating prosecutor shall consider the case submitted for resolution: (1) upon submission by the parties of their respective affidavits and supporting documents, in which event, he shall resolve the case based on the evidence thus adduced, determine whether or not there is sufficient ground to hold respondent for trial; and (2) when the respondent cannot be subpoenaed, or if subpoenaed, fails to submit his counter-affidavit within the reglementary period. In such case, he shall base his resolution on the evidence presented by the complainant.

The investigating prosecutor shall resolve the case within sixty (60) days from receipt thereof. Otherwise, he shall request extension from the City/Provincial Prosecutor or the Chief State Prosecutor before the expiration of said period. If he finds probable cause against respondent, he shall prepare the corresponding information against the respondent relative thereto. Otherwise, he shall recommend the dismissal o f the complaint.

Section 152. *Action of the City/Provincial/Chief State Prosecutor.* Upon receipt of the resolution, the City/Provincial Prosecutor or the Chief State Prosecutor shall either approve or disapprove the resolution or return it to the investigating prosecutor for appropriate action.

If he agrees or concurs with the recommendation of the investigating prosecutor and the offense falls within the original jurisdiction of the *Sandiganbayan*, he shall forward the entire records of the case together with the

resolution and pertinent information thereto, if any, to the OMB for appropriate action. Otherwise, he shall file the corresponding information, if any, in court.

If the City/Provincial Prosecutor or the Chief State Prosecutor reverses the recommendation of the investigating prosecutor, he may file the corresponding information with the courts by himself, or direct another prosecutor to do so without the need of conducting another preliminary investigation. All cases involving acts of public officials and employees in relation to office shall be forwarded to OMB for appropriate action.

Upon receipt of the resolution, the OMB shall either approve or disapprove the resolution and return the entire records of the case to the investigating prosecutor for appropriate action.

If the OMB agrees or concurs with the recommendation of the investigating prosecutor finding probable cause for the offense charged, the information together with the resolution shall be filed with the appropriate court.

Section 153. *Copies of Resolution.* The concerned member agency and parties shall each be furnished with copies of the approved resolution.

Section 154. *Motion for Reconsideration.* A motion for reconsideration may be filed within ten (10) days from receipt of the resolution. The motion shall be verified, addressed to the City/Provincial Prosecutor or the Chief State Prosecutor, accompanied by proof of service of a copy thereof on the opposing party, and stating clearly and distinctly the grounds relied upon in support of the motion. Resolution on the motion for reconsideration shall be approved by the OMB.

Section 155. *Petition for Review.* A petition for review may be filed by any party with the DOJ within fifteen (15) days from receipt of the resolution.

Section 156. *Motion for Reinvestigation.* All motions for reinvestigation of cases filed in court shall not be entertained and the same shall instead be addressed to the court trying the case. If the court orders or directs the conduct of reinvestigation proceedings, the same shall be undertaken by the prosecutor assigned to prosecute the case in court and, as far as practicable, shall be limited to the reception and evaluation of such evidence as the accused may deem fit to present for the purpose of overturning the finding of probable cause arrived at during the preliminary investigation proceedings; without prejudice, however, to the right of the complainant/offended party to be notified of such proceedings and to submit in appropriate cases proof in contravention of the evidence adduced by the accused.

The City/Provincial Prosecutor, the Chief State Prosecutor, or the OMB shall approve the resolution on reinvestigation.

Resolutions of the reinvestigating prosecutor recommending the remand of the case to the trial court for further proceedings under the original complaint or information, concurred or approved by the city/provincial prosecutor, as well as resolutions of city/provincial prosecutors disapproving recommendations of their assistants for the dismissal, withdrawal or amendment of the original complaint or information, need not be submitted to the Office of the Ombudsman for further action.^[14]

Section 157. *Copies to Member Agencies.* The concerned member agency shall always be immediately furnished with a copy of the approved resolution.

Section 158. *Motion for Reconsideration/Reinvestigation Based on a Request for Re-audit.* If the motion for reconsideration or reinvestigation of the accused is predicated on a pending request for re-audit, the same shall be referred to the COA auditor/audit team or the investigating agency for comment which shall form part of the prosecutor's opposition/comment to be filed in court. *Inquest proceedings.* When a public official is lawfully arrested without a warrant of arrest involving an offense in relation to his official function and such requires a preliminary investigation, the prosecutor may file a complaint or information without need of any preliminary investigation, provided an inquest has been conducted in accordance with existing rules.

Section 159. *Waiver.* Before the complaint or information is filed, the person arrested may ask for a preliminary investigation in accordance with the Revised Rules on Criminal Procedure, as amended, but he/she must sign a waiver of the provisions of Article 125 of the Revised penal Code as amended in the presence of his counsel. Notwithstanding the waiver, he/she may apply for bail and the investigation must be terminated within fifteen (15) days from its inception.

Section 160. *Right to Preliminary Investigation.* After the filing of the complaint or information in court without preliminary investigation, the accused within five (5) days from the time he/she learns of its filing, may ask for preliminary investigation with the same right to adduce evidence in his/her defense as provided in the Revised Rules on Criminal Procedure.

Section 161. *Prosecution Proper; Arraignment and Plea.* Arraignment is a mandatory requirement that seeks to give the accused the opportunity, at the first instance, to know why the prosecuting arm of the government has been mobilized against him and to plead. At the arraignment, the accused may enter a plea of guilty or not guilty.

Section 162. *Duties of a Trial Prosecutor Before and After Arraignment.* Before the arraignment, the trial prosecutor shall examine the information vis-à-vis the resolution of the investigating prosecutor/graft investigation officer in order to make the necessary corrections or revisions and to ensure that the information is sufficient in form and substance.

After arraignment, the trial prosecutor shall prepare his/her witnesses for trial. He/she shall coordinate with the member agency coordinator to ensure that all witnesses shall be presented in accordance with the logical and chronological sequence of the technical aspects that must be proven in court.

Section 163. *Deputation of COA Lawyers as Prosecutor.* The OMB or the DOJ, whenever necessary, shall deputize a COA lawyer as private prosecutor under the direct control and supervision of the public prosecutor. The COA lawyer shall coordinate and collaborate with the Office of the Special Prosecutor and DOJ prosecutors in the active prosecution of the case.

Section 164. *Pre-Trial.* A Pre-trial is a process whereby the accused and the prosecutor in a criminal case work out, usually at the arraignment stage, a naturally satisfactory disposition of a case subject to court approval in order to expedite the trial of the case.

Section 165. *Duties of the Prosecutor Before and After Pre-Trial Conference.* Before the pre-trial conference, the prosecutor should know every fact and detail of the case. This can be accomplished by interviewing the complainant and other witnesses; and by thorough examination of the available documentary and physical evidence. The prosecutor should place importance on the testimony of the expert witness. The knowledge that the prosecutor will gain from said witness would help him determine the procedures undertaken in the examination/audit, the technical terms applied, and the reasons in arriving at a certain conclusion.

The prosecutor must always bear in mind that he/she has to prove his/her case beyond reasonable doubt and that every act or incident should be proven by the testimony of qualified and competent witness.

After the pre-trial conference, the prosecutor shall always ensure that any agreement or admission made or entered therein is in writing and signed by the accused and his/her counsel.

Section 166. *Subject Matters of Pre-Trial.* The pre-trial conference shall consider the following:

1. Plea bargaining – this is a process where the defendant usually pleads guilty to a lesser offense or to only one or some of the

counts of a multi-count indictment in return for a lighter sentence than that for a grave charge;

2. Stipulation of facts – this is the agreement of the parties on some facts admitted, some facts covered by judicial notice or on matters not otherwise disputed by them;
3. Marking of documentary evidence in advance for identification;
4. Waiver in advance of objections to admissibility of evidence;
5. List of witnesses to be presented which should be qualified by the following statement: “that other witnesses may be presented in the course of the trial”; and
6. Such other matters that will promote a fair and expeditious trial.

Section 167. *Rules on Plea Bargaining.*

1. Approving the Authority of the City/Provincial/chief State Prosecutor. The City/Provincial/Chief State Prosecutor are authorized to approve plea bargaining agreements entered into, concurred in or consented to by the prosecutors under them in all cases where the penalty to be imposed on the accused as a result of the plea bargaining is lower by not more than one degree than that prescribed by law for the offense charged in the complaint or information.
2. Plea Bargaining Agreements Requiring Prior Written Approval by the Ombudsman or His Deputies. No plea bargaining agreement entailing: a) the imposition of a penalty lower by more than one degree from that prescribed by law for the offense charged in the complaint or information; or b) the imposition of a penalty different in nature from that prescribed by law for the offense charged in the complaint or information; or c) the dismissal of other charges filed or pending in court against the same accused shall be entered into, concurred in or consented to by the city/provincial prosecutor or chief state prosecutor and their assistants without the prior written approval of the OMB.
3. The following documents shall be transmitted to the OMB in cases falling under the provisions of the preceding paragraph:
 - a. written offer of the accused to enter into a plea bargaining agreement;

- b. recommendation of the trial prosecutor stating among others, the reason/s justifying the acceptance of the offer of the accused; and
- c. the original and a copy of the manifestation of consent to the plea bargaining offer of the accused duly signed by the trial prosecutor and the offended party and the latter's counsel, if any.

Section 168. *Attendance in the Pre-trial Conference.* The concerned auditor/investigator shall be required to attend the pre-trial conference and be consulted of the offer of the plea bargaining.

Section 169. *Motions for Suspension/Issuance of Writ of Preliminary Attachment.* After arraignment, the trial prosecutors shall, immediately upon filing of the information, file with the proper court, the corresponding motion for suspension of the accused from office *pendente lite*. Pursuant to the provisions of Section 13 of R.A. 3019, as amended, otherwise known as the "Anti Graft and corrupt Practices Act", any incumbent public official against whom any valid criminal information have been filed in court for the following offenses, whether as a simple or as a complex offence and in whatever stage of execution and mode of participation shall be suspended from office: (a) violation of R.A. 3019, as amended, (b) offenses defined and penalized under title 7, book II of the Revised Penal Code; and (c) any offense involving fraud, public funds or property penalized under the Revised Penal Code, and other special laws such as, but not limited to, falsification and bribery or malversation.

In all cases involving recovery of public funds and/or property, the prosecutor assigned to prosecute the case, as soon as the trial commences, shall file with the court a motion for the issuance of a writ of preliminary attachment pursuant to rule 127 of the Revised Rules on Criminal Procedure.

Section 170. *Trial.* The object of a trial is to mete out justice, and to convict the guilty and to protect the innocent. Thus, the trial should be a search for the truth and not a contest of technicalities.

Section 171. *Expeditious Prosecution of Criminal Cases Filed with the Courts.* The prosecutor shall always be ready for trial with his witnesses who shall be subpoenaed in advance of the scheduled trial dates. The member agency coordinator should ensure that witnesses conferred with the prosecutor before the scheduled hearing. No postponement of the trial or proceedings of a criminal case shall be initiated or caused by the prosecutor except on instances where the postponement is occasioned by the absence of material witnesses or for other causes beyond his control or not attributable to him.

Section 172. *Preparation of Formal Offer of Exhibits.* The prosecutor shall safely keep his documentary and physical evidence and prepare a list

thereof in the order they have been marked as exhibits, identifying each by letter or number, describing it briefly and stating its specific purpose.

Section 173. *Defense Evidence.* Before reception of evidence for the defense starts, the prosecutor shall ask from the adverse counsel the number of witnesses he intends to present.

If the names of defense witnesses are disclosed, the prosecutor shall elicit from reliable sources the whereabouts of these witnesses, their moral character, background, reasons for testifying and the relationship with the accused, among others, to enable him to have a clear view of the defense of the accused.

Section 174. *Discontinuance of Proceedings.* During the presentation of the prosecution's evidence, the prosecutor shall not cause or allow the discontinuance of the proceedings except for other similarly compelling reasons not attributable to him.

Section 175. *Presentation of Witnesses.* The order in the preparation of witnesses, as far as practicable, shall conform to the logical sequence of events obtaining in the case on trial in order to present a clear, organized and coherent picture of the prosecution's evidence to the court.

The rule of logical sequencing notwithstanding, a witness whose testimony is vital to the case and whose life is in danger or who may be sick/injured and may possibly die, should be made to testify as early as practicable.

Section 176. *Examination of Witness for the Prosecution.* Where it shall satisfactorily appear that the witness for the prosecution is too sick or infirm to appear at the trial as directed by the order of the court, or has to leave the Philippines with no definite date of returning thereto, he may forthwith be conditionally examined before the court. Such examination in the presence of the accused, or after reasonable notice to attend the examination has been served upon him, will be conducted in the same manner as an examination during trial. Failure or refusal on the part of the accused to attend the examination after notice herein before provided shall be considered a waiver. The statement thus taken may be admitted on behalf of or against the accused.

Section 177. *Cross Examination of Defense Witnesses.* The prosecutor shall endeavor to secure well in advance all available information about the defense witness in order to prepare for an effective cross examination. Where the testimony of a defense witness bear no effect on the evidence of the prosecution, a cross examination need not be conducted.

Section 178. *Rebuttal Evidence.* The presentation and nature of rebuttal evidence will depend on the effect of the defense's evidence may have caused on the prosecution's evidence. The recall of a witness who already testified

during the prosecution's presentation of evidence to merely refute what a defense witness is not generally a rebuttal evidence. Where there is nothing to refute, rebuttal evidence is unnecessary.

Section 179. *Request for Subpoena.* In all cases requiring the appearance in court of a witness for the purpose of testifying upon a report (e.g. medico-legal, necropsy, chemistry, ballistic, statement of accounts, etc.) prepared by him or by his office, the prosecutor shall indicate the reference number of the report in the request for subpoena.

Section 180. *Support to Witnesses.* To ensure the availability of the witnesses, the member agency shall provide the necessary logistical and legal support, as well as security to its employees or former employees who are utilized as witnesses.

Section 181. *Custody of Physical and Real Evidence Pending Trial.* In keeping with the professional responsibility of the prosecutor, all the physical and real evidence, whenever feasible and practicable, shall be in the custody of the local prosecutor's office, except when the custodianship is assigned by law to another agency. The prosecutor shall ensure that measures are taken to provide for secondary evidence consisting of photographs, or pictures of the physical and real evidence, which evidence shall not be attached to the records of the case.

CHAPTER 6 PRESIDENTIAL ANTI-GRAFT COMMISSION

Administrative Proceedings

Section 182. *Administrative Charge; How Initiated.* An administrative charge within the jurisdiction of the Commission may be initiated and prosecuted by:

- a) written complaint under oath accompanied by affidavits of witnesses and other evidences in support of the charge(s), or
- b) upon written charge by the disciplining authority.

Except in the case of anonymous complaint, no complaint shall be given due course unless the same is under oath.

In case where a complaint is filed not under oath, the Commission shall direct the complainant to comply with the formal requirements.

Section 183. *Preliminary Evaluation.* The complaint or charge shall be assigned by the Chairman to a Commissioner and it shall be immediately

referred by the Executive Director to the Director of the Investigation Office, for preliminary evaluation and recommendation to the assigned Commissioner

The docket number of complaints or charges referred to the Investigation Office shall, thereafter, bear and be identified as an administrative proceeding by the prefix "PAGC ADM-".

Section 184. *Recommendation for Dismissal of the Complaint Where Prima Facie Case or Jurisdiction is not Established.* If the subject matter of the case or the person of the respondent to be investigated is not within the jurisdiction of the Commission, the Commissioner assigned shall submit, for adoption by the Commission, an Order dismissing the case for lack of jurisdiction. Thereafter, the Commission shall advise the President in writing of such dismissal.

And if, in his opinion, no *prima facie* case has been established, the Commissioner assigned shall likewise submit for adoption by the Commission a Memorandum recommending the dismissal of the case. Such recommendation shall be submitted to the Office of the President for approval.

Section 185. *Recommendation for Preventive Suspension.* In proper cases, during the pendency of its investigation on the administrative case against the respondent, the Commission may recommend to the President his preventive suspension for such periods as may be allowed by law.

Where the administrative investigation against the respondent under preventive suspension is not completed within the period of suspension and the delay in the disposition of the case is due to the fault, negligence or request of the respondent, the Commission may recommend to the President the extension of the suspension for a period equivalent to the delay.

Section 186. *How Respondent is Charged.* Where a prima facie case is determined to have been established, the respondent shall be required, through an ORDER, to file his or her counter-affidavit/verified answer (not a Motion to Dismiss or Motion for Bill of Particulars) to the charges against him or her, furnishing him or her with copies of the complaint, the sworn statements and other documents submitted by the complainant.

Respondent is given an inextendible period of ten (10) days from receipt of the Order to file his Counter-Affidavit/verified Answer (not a Motion to Dismiss or Motion for Bill of Particulars), together with the affidavits of his or her witnesses and other documents in his or her defense and proof of service on the complainant or his or her counsel.

Any motion to dismiss or for a bill of particulars that may be filed shall be expunged from the records, and the filing thereof shall not suspend the

proceedings nor the period for the filing of the respondent's Counter-Affidavit/verified Answer.

The filing or submission of reply-affidavits and/or rejoinders shall not be required or allowed except where new issues of fact or questions of law which are material and substantial in nature are raised or invoked in the counter-affidavit or subsequent pleadings and there exists a need for said issues or questions to be controverted or rebutted, clarified or explained to enable the Commission to arrive at a fair and judicious resolution of the case.

If allowed or required by the Commission, the period for the submission of reply affidavits or rejoinders shall not exceed five (5) days.

Section 187. *Failure to File Response.* The respondent's failure to file his Counter-Affidavit/verified Answer within the ten (10) day period given him or her shall be considered a waiver of his or her right to file the same and to present evidence in his or her behalf, and the Commissioner assigned shall recommend the appropriate action to the Commission, on the basis of the complaint and documents on record.

Section 188. *Action After Respondent's Response.* If, upon evaluation of the documents submitted by both parties, it should appear either that the charge or charges have been satisfactorily traversed by the respondent in his Counter-Affidavit/verified Answer, or that the Counter-Affidavit/verified Answer does not tender a genuine issue, the Commissioner assigned shall forthwith, or after a clarificatory hearing to ascertain the authenticity and/or significance of the relevant documents, submit for adoption by the Commission the appropriate recommendation to the President.

The Commissioner assigned may, at his sole discretion set a hearing to propound clarificatory questions to the parties or their witnesses if he or she believes that there are matters which need to be inquired into personally by him or her. In said hearing, the parties shall be afforded the opportunity to be present but without the right to cross-examine. If they so desire, they may submit written questions to the Commissioner assigned who may propound such questions to the parties or witnesses concerned. Thereafter, the parties be required, to file with the Commission, within an inextendible period of five (5) days, and serve on the adverse party his verified Position Paper.

Section 189. *Summary Resolution After Preliminary Conference.* Should it be determined prior to the first hearing date, that the issues can be resolved without need for setting the case for clarificatory questioning, the Commissioner assigned shall forthwith, submit, for adoption by this Commission, the appropriate recommendation to the President.

Section 190. *Calendar and Postponements.* (a) Postponements shall not be allowed except in meritorious cases substantiated under oath and in no instance shall each party be granted more than one postponement of five (5) days nor shall a postponement cancel more than one (1) scheduled hearing.

Section 191. *Requests for Subpoena.* All requests for the issuance of subpoenas for witnesses previously named shall be made three (3) days before the scheduled hearing. Requests for the issuance of subpoenas for other witnesses shall be made at least five (5) days before the date of hearing at which they are supposed to appear.

Fact-finding Investigation

Section 192. *Evaluation of Complaints, etc.* Anonymous and unsworn complaints, and similar reports or request for *motu proprio* investigation shall, after notation by the Chairman of the Commission, be referred by the Executive Director to the head of the Fact-Finding Office for a preliminary evaluation of the verifiability, significance and magnitude of the transactions and amounts involved.

The docket number of complaints or charges referred to the Fact-Finding Office shall, thereafter, bear and be identified as a fact-finding inquiry by the prefix "PAGC FFI-".

Section 193. *Scope of and Period for Preliminary Evaluation.* (a) The preliminary evaluation of a complaint, charge or report shall include the examination of the records and documents submitted as well as of other relevant documents including those available in government offices and the validation and verification thereof by oath or certification.

On application by the Director of the Investigation Office or the head of the Fact-Finding Office, the chairman or Commissioner assigned may issue subpoena *duces tecum* for the production of documents or materials needed in the course of the preliminary evaluation.

(b) The preliminary evaluation shall be completed, and the Evaluation Report submitted to the Commissioner assigned, within five (5) days from receipt of the records by the Director of the Fact-Finding Office unless an extension is granted by the Chairman.

Section 194. *Anonymous Complaint Against Presidential Appointee.* An anonymous complaint against a presidential appointee in the Executive Department shall not be given due course unless there appears on its face or the supporting documents attached to the anonymous complaint a probable cause to engender a belief that the allegations may be true.

Section 195. *When Formal Inquiry Initiated.* (a) If, upon review of the Evaluation Report, the Commissioner assigned believes that the events or transactions reported are verifiable and further inquiry into the complaint or report may uncover graft and corruption or may disclose serious deficiencies in the recording, implementation, monitoring and/or control procedures in the government unit or government-owned or controlled corporation involved, for which the Commission may recommend to the President measures to eradicate the opportunities and climate favorable to the commission of graft and corruption in the unit of corruption, he or she shall submit, for the approval of the Commission, an Order so stating and directing the docketing of the complaint or report for Formal Inquiry by the Commission. Otherwise, he shall submit for the approval by the Commission, an Order terminating further proceedings on the complaint or report.

(b) In the Formal Inquiry, the Commissioner assigned, assisted by the Chief of the Fact-Finding Office, shall receive, on invitation or on subpoena, such documents and testimonies of witnesses as may be relevant and material to the inquiry, and shall call and secure the assistance of any government unit as may be necessary. A public officer identified in an anonymous or unverified complaint or report as a participant in a questioned transaction, whose testimony may be material to the fact-finding inquiry, may be invited, if he so wishes, to give his comments, which need not be verified.

Section 196. *Courses of Action Where Administrative Offense Uncovered.* If in the course of the Fact-Finding Inquiry, evidence is uncovered tending to prove the commission of an administrative offense by a public officer or employee, the Commission shall proceed, alternatively, as follows:

- (1) If the case is not within its jurisdiction, the Commissioner assigned shall submit, for adoption by the Commission, a Memorandum advising the President *motu proprio* dismissal thereof and the transmittal of the documents and other evidence to the proper disciplining authority with its preliminary findings and recommendations;
- (2) If the case is within its jurisdiction, the Commission shall refer the documents to the Director of the Investigation Office for further evaluation, who shall, if he finds the existence of a *prima facie* case, file a charge or a sworn complaint in the name of the Investigation Office as nominal complainant. The charge or complaint shall be entered in the records of the Receiving Section under a new docket number which shall bear and be identified as an administrative case by the prefix "PAGC ADM".

(b) If a complaint or charge against the public officer or employee is filed with the Commission pursuant to the provisions of the immediately preceding subsection (a)(2) the case shall thereafter proceed and be governed by the Rules on Administrative Investigation and henceforth all evidence relating to the commission of the offense shall be included from the Fact-Finding Inquiry and presented in the administrative proceedings.

General Provisions

Section 197. *Record of Proceedings.* The proceedings of the Administrative Investigation and Fact-Finding Inquiry of the Commission are not required to be recorded by stenographers. In lieu of a transcript of stenographic notes, the record of the hearings shall consist of the written summary thereof made by the Commission, the Commissioner assigned or the panel of hearing officers and incorporated in an Order issued after each hearing. The said summary shall include an abstract of the substance of the testimony of witnesses, an enumeration of the documents offered in evidence and the marking thereof, the significant rulings handed down, and other matters which the Commission, the Commissioner assigned, or the panel of hearing officers may consider important and significant. The proceedings may be tape-recorded by the parties.

Section 198. *Submission of Report and Recommendations.* After completing its investigation or hearing, the Commission *en banc* shall submit its report and recommendations to the President. The report and recommendations shall state, among others, the factual findings and legal conclusions, as well as the penalty recommended to be imposed or such other action that may be taken.

^[1] Inter-Agency Anti-Graft Coordinating Council Resolution No. 3-98.

^[2] Ill-gotten wealth cases before February 26, 1986 were under the jurisdiction of the Presidential Commission on Good Government.

^[3] Please refer to Appendix A of Annex II.

^[4] Please refer to Appendix D of Annex II

^[5] Section 4, Republic Act 8249 (Act Further Defining the Jurisdiction of the Sandiganbayan, as amended).

^[6] Department of Justice Order No. 223, as amended.

^[7] OMB Admin. Order No. 13 dated February 7, 1996.

^[8] Sec. 4 of R.A. 7795, amending the jurisdiction of the Sandiganbayan

^[9] Sec. 32 of RA 7691 on the expanded jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts and the Municipal Circuit Trial Courts.

^[10] OMB Administrative Order No. 13 series of 1996.

^[11] Teresita G. Fabian vs. Hon. Aniano A. Desierto, et al. G.R. No. 129742 promulgated on September 16, 1998.

[\[12\]](#) Administrative Order No. 14, Series of 2000, Amending Section 7, Rule III of Administrative Order No. 07 effective July 31, 2000.

[\[13\]](#) COA Memorandum No. 95-112 dated December 26, 1995.

[\[14\]](#) Par. 4, OMB Adm. Order No. 13, s. 1996