



Republic of the Philippines

OFFICE OF THE OMBUDSMAN

Agham Road, Diliman, Quezon City

ADMINISTRATIVE ORDER No. 17

AMENDMENT OF RULE III, ADM. ORDER NO. 07

Rule III, Administrative Order No. 07 of this Office is hereby amended, to read as follows:

"RULE III

PROCEDURE IN ADMINISTRATIVE CASES

Section 1. Grounds for administrative complaint. - An administrative complaint may be filed for acts or omissions **which are:**

- a) contrary to law or regulations;
- b) unreasonable, unfair, oppressive or discriminatory;
- c) inconsistent with the general course of **an** agency's functions though in accordance with law;
- d) **based** on a mistake of law or an arbitrary ascertainment of facts;
- e) in the exercise of discretionary powers but for an improper purpose;
- f) otherwise irregular, immoral or devoid of justification;
- g) due to any delay or refusal to comply with the referral or directive of the Ombudsman or any of his deputies against the officer or employee to whom it was addressed; and
- h) such other grounds provided for under E.O. 292 and other applicable laws.

Section 2. Public officers covered; exceptions. - All elective and appointive officials of the government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local governments, government-owned or controlled corporations and their subsidiaries are subject to the disciplinary authority of the Office of the Ombudsman. ✓

Excepted from the foregoing are Members of Congress, the Judiciary and officials removable only by impeachment; provided, however, that the Office of the Ombudsman may investigate any serious misconduct in office allegedly committed by officials removable by impeachment for the purpose of filing a verified complaint for impeachment, if warranted.

Section 3. How initiated. - An administrative case may be initiated by a written complaint under oath accompanied by affidavits of witnesses and other evidence in support of the charge. **Such complaint shall be accompanied by a Certificate of Non-Forum Shopping duly subscribed and sworn to by the complainant or his counsel.** An administrative proceeding may also be ordered by the Ombudsman or the respective Deputy Ombudsman on his initiative or on the basis of a complaint originally filed as a criminal action or a grievance complaint or request for assistance.

Section 4. Evaluation. - Upon receipt of the complaint, the same shall be evaluated to determine whether the same may be:

- a) dismissed outright for any of the grounds stated under Section 20 of Republic Act No. 6770, **provided, however, that the dismissal thereof is not mandatory and shall be discretionary on the part of the Ombudsman or the Deputy Ombudsman concerned;**
- b) **treated as a grievance/request for assistance which may be referred to the Public Assistance Bureau, this Office, for appropriate action under Section 2, Rule IV of this Rules;**
- c) referred to other disciplinary authorities under paragraph 2, Section 23, R.A. 6770 for the taking of appropriate administrative proceedings;

- d) referred to the appropriate office/agency or official for the conduct of further fact-finding investigation; or
- e) docketed as an administrative case for the purpose of administrative adjudication by the Office of the Ombudsman.

Section 5. Administrative adjudication; How conducted. –

- a) If the complaint is **docketed as an administrative case**, the respondent shall be furnished with a copy of the affidavits and other evidence submitted by the complainant, and shall be ordered to file his counter-affidavit and other evidence in support of his defense, within ten (10) days from receipt thereof, together with proof of service of the same on the complainant who may file his reply-affidavit within ten (10) days from receipt of the counter-affidavit of the respondent;
- b) If the hearing officer finds no sufficient cause to warrant further proceedings on the basis of the affidavits and other evidence submitted by the parties, the complaint may be dismissed. Otherwise, he shall **issue an Order (or Orders) for any of the following purposes:**
 - 1) To direct the parties to file, within ten (10) days from receipt of the Order, their respective verified position papers. The position papers shall contain only those charges, defenses and other claims contained in the affidavits and pleadings filed by the parties. Any ✓

additional relevant affidavits and/or documentary evidence may be attached by the parties to their position papers. On the basis of the position papers, affidavits and other pleadings filed, the Hearing Officer may consider the case submitted for resolution.

- 2) If the Hearing Officer decides not to consider the case submitted for resolution after the filing of the position papers, affidavits and pleadings, to conduct a clarificatory hearing regarding facts material to the case as appearing in the respective position papers, affidavits and pleadings filed by the parties. At this stage, he may, at his discretion and for the purpose of determining whether there is a need for a formal trial or hearing, ask clarificatory questions to further elicit facts or information;

In the conduct of clarificatory hearings, the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine the party/witness being questioned. The parties may be allowed to raise clarificatory questions and elicit answers from the opposing party/witness, which shall be coured through the Hearing Officer who shall determine whether or not the proposed questions are necessary and relevant. In such cases, the Hearing Officer shall ask the question in such manner and phrasing as he may deem appropriate;

3) If the Hearing Officer finds no necessity for further proceedings on the basis of the clarificatory hearings, affidavits, pleadings and position papers filed by the parties, he shall issue an Order declaring the case submitted for resolution. The Hearing Officer may also require the parties to simultaneously submit, within ten (10) days from receipt of the Order, their Reply Position Papers. The parties, if new affidavits and/or exhibits are attached to the other party's Position Paper, may submit only rebutting evidence with their Reply Position Papers.

4) If the Hearing Officer finds the need to conduct a formal investigation on the basis of the clarificatory hearings, pleadings, affidavits and the position papers filed by the parties, an Order shall be issued for the purpose. In the same Order, the parties shall be required to file within ten (10) days from receipt of the Order their respective pre-trial briefs which shall contain, among others, the nature of the charge(s) and defenses, proposed stipulation of facts, a definition of the issues, identification and marking of exhibits, limitation of witnesses, and such other matters as would expedite the proceedings. The parties are not allowed to introduce matters in the pre-trial briefs which are not covered by the position papers, affidavits and pleadings filed and served prior to issuance of the Order directing the conduct of a formal investigation. ✓

c. The conduct of formal proceedings by the Office of the Ombudsman in administrative cases shall be non-litigious in nature. Subject to the requirements of due process in administrative cases, the technicalities of law, procedure and evidence shall not strictly apply thereto. The Hearing Officer may avail himself of all reasonable means to ascertain speedily the facts of the case. He shall take full control of the proceedings, with proper regard to the right of the parties to due process, and shall limit the presentation of evidence to matters relevant to the issue(s) before him and necessary for a just and speedy disposition of the case.

d. In the conduct of formal administrative investigation, the Hearing Officer shall set the case for continuous trial. The parties shall be notified at least ten (10) days before the date of the initial hearing. Failure of any or both of the parties to appear at the scheduled hearing(s) is not necessarily a cause for the dismissal of the complaint. A party who appears may be allowed to present his evidence in the absence of the adverse party who was duly notified of the hearing; however, if the absent party is able to show that there is a valid cause for his absence, he shall be afforded the opportunity to cross-examine the witness(es) presented during his absence. In case of two (2) successive unjustified non-appearances of any party in the proceedings, it shall be the option of the party who is present to submit the

case for resolution on the basis of the records of the case and the evidence so far presented;

- e. Only witnesses whose affidavits have been submitted by the parties and served on the adverse party prior to the issuance of the Order directing the conduct of a formal investigation may be allowed to testify at the hearing. The affidavit of any witness shall constitute his direct testimony, subject to cross-examination, re-direct examination and re-cross examination. **Unless the testimony of the witness involves newly discovered evidence, the Hearing Officer may not allow the presentation of witnesses whose affidavits have not been filed by the parties and served on the adverse party prior to the issuance of the Order to conduct formal investigation. If a witness whose testimony involves newly discovered evidence is allowed to testify, the adverse party shall have the right to cross-examine such witness and to submit rebuttal evidence, if any, relevant to said newly discovered evidence;**
- f. The parties shall be allowed the assistance of counsel and the right to the production of evidence through the compulsory process of subpoena ad testificandum and subpoena duces tecum;
- g. **The following pleadings shall be deemed prohibited in the cases covered by these Rules:** ✓

1. Motion to dismiss, although any ground justifying the dismissal of the case may be discussed in the counter-affidavit/pleadings of the party;
2. Motion for bill of particulars; and
3. Dilatory motions including, but not limited to, motions for extension of time, for postponement, second motions for reconsideration and/or re-investigation.

Said pleadings shall be stricken off the records of the case.

Section 6. Rendition of decision. - Not later than thirty (30) days after the **case is declared submitted for resolution**, the Hearing Officer shall submit a proposed **decision** containing his findings and recommendation for the approval of the Ombudsman. **Said proposed decision shall be reviewed by the Directors, Assistant Ombudsmen and Deputy Ombudsmen concerned. With respect to low ranking public officials, the Deputy Ombudsman concerned shall be the approving authority.** Upon approval, copies thereof shall be served upon the parties and the head of the office or agency of which the respondent is an official or employee for his information and compliance with the appropriate directive contained therein.

Section 7. Finality and execution of decision. - 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, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and ✓

conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer.

Section 8. Motion for reconsideration or reinvestigation; Grounds. - Whenever allowable, a motion for reconsideration or reinvestigation may only be entertained if filed within ten (10) days from receipt of the decision or order by the party on the basis of any of the following grounds:

- a) New evidence had been discovered which materially affects the order, directive or decision;
- b) **Grave** errors of facts or laws or **serious** irregularities have been committed prejudicial to the interest of the movant.

Only one motion for reconsideration or reinvestigation shall be allowed, and the Hearing Officer shall resolve the same within **five (5) days from the date of submission for resolution.** ✓

Section 9. Preventive suspension. – Pending investigation, the respondent may be preventively suspended without pay if, in the judgment of the Ombudsman or his proper deputy, the evidence of guilt is strong and (a) the charge against such officer or employee involves dishonesty, oppression or gross misconduct, or gross neglect in the performance of duty; or (b) the charge would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice **the just, fair and independent disposition of the case** filed against him.

The preventive suspension shall continue until the case is terminated; however, the total period of preventive suspension should not exceed six months. Nevertheless, when the delay in the disposition of the case is due to the fault, negligence or any cause attributable to the respondent, the period of such delay shall not be counted in computing the period of suspension herein provided.

Section 10. Penalties. – (a) For administrative charges under **Executive Order No. 292** or **such other executive orders, laws or rules under which the respondent is charged, the penalties provided thereat shall be imposed by the Office of the Ombudsman;** (b) in administrative proceedings conducted under these Rules, the Office of the Ombudsman may impose the penalty of **reprimand**, suspension without pay for a **minimum period of one (1) month up to a maximum period of one (1) year, demotion, dismissal from the service, or a fine equivalent to his salary for one (1) month up to one (1) year, or from Five Thousand Pesos (P5,000.00) to twice the amount malversed, illegally taken, or lost, or both, at the discretion of the Ombudsman, taking into consideration circumstances that mitigate or aggravate the liability of the officer or employee found guilty of the complaint or charge.**

The penalty of dismissal from the service shall carry with it that of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for re-employment in the government service, unless otherwise provided in the decision.

This is without prejudice to the **exercise of** authority of the Ombudsman under Section 15, par. (3) of RA 6770.”

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

September 15, 2003.

Simeon V. Marcelo
SIMEON V. MARCELO
Tanodbayan
(Ombudsman)