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Administrative Order No. 20
Series of 2008

OMBUDSMAN RULES OF PROCEDURE FOR MEDIATION

Policy Statement

The Office of the Ombudsman shall actively promote mediation in line with the *Alternative Dispute Resolution Law* (Republic Act No. 9285) to speed up the disposition of cases under its jurisdiction and give priority to complaints filed against high ranking government officials and those involving grave offenses, as mandated by *The Ombudsman Act of 1989* (Republic Act No. 6770). Towards this end, the Office of the Ombudsman shall establish and institutionalize a mediation system which will enable it to render meaningful, responsive, and relevant public assistance.

Rule 1
Preliminary Provisions

Section 1. Title. These rules shall be known as the "Ombudsman Rules of Procedure for Mediation" hereinafter referred to as "the Rules".

Sec. 2. Scope. The Rules shall apply to all complaints, grievances, or requests for assistance and such other matters cognizable by the Office of the Ombudsman which may be the subject of mediation.

Sec. 3. Definition of Terms. For purposes of the Rules, the term:

- a) **"Complaint"** means any allegation of any act or omission which may appear to be unreasonable, unfair, oppressive, discriminatory, illegal, unjust, improper, or inefficient and may be the subject of mediation, filed by the complainant against public officials or employees, including those in the government owned and controlled corporations, as well as private individuals who may be involved in the acts or omissions complained of. The complaint may be filed in any form or manner with the Office of the Ombudsman or any of its area, sectoral, regional, or resident ombudsman offices.
- b) **"Director"** means the Director of the Public Assistance Bureau or its counterpart unit or bureau in the area or sectoral offices, or the Director of the Bureau of Resident Ombudsman;
- c) **"Evaluating Officer"** means an officer duly authorized to evaluate whether a complaint is appropriate for the conduct of mediation, and shall include the Director of the investigating bureau, the Resident Ombudsman or the head of the Ombudsman Regional Office for cases filed with their respective offices;
- d) **"Filing"** means the act of relaying any information or grievance to the Office of the Ombudsman in any form and in whatever manner, or the submission of an initiatory pleading;
- e) **"Investigating Officer"** means any Ombudsman personnel duly authorized to conduct preliminary investigation, administrative adjudication, or fact-finding investigation;

- f) **"Mediation"** means a voluntary process in which a mediator facilitates communication and negotiation, and assists the parties in reaching a voluntary agreement regarding a dispute;
- g) **"Mediator"** means any trained officer or personnel duly designated to conduct mediation;
- h) **"Party"** means a person who participates in a mediation and whose consent is necessary to resolve the dispute;
- i) **"Private Caucus"** means a private meeting with either party called by the mediator to discuss issues in private to arrive at a mutually satisfactory agreement beneficial to all parties;
- j) **"Representative"** means a duly authorized official of an agency, corporation or organization who is directly involved in its operations involved in the subject matter of mediation and in a position to grant the relief or remedy sought or to enter into a settlement agreement;
- k) **"Resident Ombudsman"** means an employee or personnel organic to the Office of the Ombudsman and designated as such to a government agency.
- l) **"Settlement Agreement"** means mutual concessions or the consensus arrived at by the contending parties during the mediation proceedings, reduced into writing, and signed by the parties and the mediator;
- m) **"Successful Mediation"** means the parties reached a settlement agreement.

Sec. 4. Form of Complaint, Grievance or Request for Assistance. The complaint, grievance, or request for assistance subject of mediation may be in any form, either oral or in writing or filed through electronic means. In any case, the requesting or complaining party shall indicate his address and contact numbers and those of the party complained of.

Sec. 5. Subject of Mediation. The following shall be indorsed for mediation:

- a) Complaints, grievances or requests for assistance seeking redress or relief concerning an act or omission of a public official or employee, office, or agency alleged to be unreasonable, unfair, oppressive, illegal, unjust, discriminatory, improper or inefficient, and which does not necessarily amount to a criminal or administrative offense, as defined under Section 1, Rule IV, Administrative Order No. 7, series of 1990, as amended, of the Office of the Ombudsman;
- b) Light administrative offenses where the penalty imposed by pertinent laws and Civil Service Rules is reprimand, such as:
 - 1) Borrowing of Money by a Superior Officer from a Subordinate
 - 2) Willful Failure to Pay Just Debt
 - 3) Discourtesy in the Course of Official Duties;
- (c) The following cases which are covered by the Revised Rules on Summary Procedure:
 - 1) violation of traffic rules and regulations
 - 2) violation of rental law
 - 3) violation of municipal and city ordinances
 - 4) violation of *Batas Pambansa Blg. 22* (Bouncing Checks Law)

- 5) all other criminal cases where the penalty prescribed by law for the offense charged is imprisonment not exceeding six (6) months or a fine not exceeding one thousand pesos (P1,000), or both, irrespective of other imposable penalties, accessory or otherwise, or of the civil liability arising therefrom;
- d) Cases which may be cognizable at the first instance by the *Lupong Tagapamayapa* under Section 408, Chapter VII of the Local Government Code (Republic Act No. 7160);
- e) Criminal negligence resulting in damage to property;
- f) Such other similar offenses which may be brought by the parties for mediation, except those which by law may not be compromised.

During the mediation proceedings, only the civil aspect of the complaint may be compromised although the criminal and administrative aspect may be discussed to find out whether or not the complaint was filed due to misunderstanding or misappreciation of facts.

Rule 2

The Mediation Process

Sec. 1. Initial Evaluation. Within two (2) working days from receipt of the complaint, grievance, or request for assistance, the Evaluating Officer shall evaluate it to determine whether

- a) it is appropriate for mediation under Section 5 of the preceding Rule;
- b) it is practicable for all parties to attend the mediation proceedings; or
- c) a need for emergency relief makes referral to mediation impracticable.

In the event the complaint, grievance or request for assistance is recommended for mediation, it shall then be indorsed to the records office for docketing as a MED case using the following codes:

MED-C-(year)-(sequential number) for the Central Office
MED-L-(year)-(sequential number) for Luzon
MED-V-(year)-(sequential number) for Visayas
MED-M-(year)-(sequential number) for Mindanao
MED-P-(year)-(sequential number) for MOLEO
MED-BRO-(agency)-(year)-(sequential number) for BRO
MED-L-CAL-(year)-(sequential number) for Calamba
MED-V-ILO-(year)-(sequential number) for Iloilo
MED-M-CDO-(year)-(sequential number) for Cagayan de Oro.

For pending cases, the original docket shall also be indicated in parenthesis below the MED docket.

The docketed MED cases shall be forwarded for review within the same day to the Assistant Ombudsman of the Public Assistance and Corruption Prevention Office in the Central Office or the area or sectoral office concerned.

Within two (2) working days, the Assistant Ombudsman or his/her duly designated representative shall cause the raffling of the case to a mediator by the existing raffle committee. He/she may also indorse the case to the appropriate Ombudsman office in the place where the parties are residing or

holding office. The same procedure for raffling shall be observed in the area or sectoral offices. The Director concerned shall retain the original complaint, grievance or request for assistance. The mediator shall only be provided the docket number and the title of the case, as well as the names, addresses or place of assignment, and the contact numbers of the parties.

Sec. 2. How conducted. Mediation shall be facilitated by duly designated mediators, selected by raffle. However, complaints, grievances, or requests for assistance filed before the office of the Resident Ombudsman shall be mediated by the organic resident ombudsman concerned or a designated BRO staff.

Sec. 3. Initial Conference; Failure to Attend. Within two (2) working days from receipt of the case for mediation, the mediator shall cause the service of a notice to all parties to attend the initial conference for the purpose of mediating the case. The notice shall be signed by the director concerned or, in the case of the BRO, by the organic resident ombudsman.

The initial conference shall be conducted within ten (10) calendar days from the date of assignment. Where the parties live outside the city or region where the Ombudsman office is located, the initial conference shall be conducted within thirty (30) calendar days depending on the distance. The parties may agree on the schedule of subsequent conferences if warranted.

During the initial conference, the parties shall sign a mediation agreement consenting to submit their dispute to mediation and agreeing to abide by the Rules. If any of the parties fails to appear during the initial conference despite due notice, the mediator shall schedule another conference. Failure of any party to appear during the second setting shall be sufficient ground for the mediator to terminate the mediation and refer the case to the proper office or bureau for appropriate action or disposition.

Sec. 4. Period for Settlement; Extension. If no settlement agreement is reached within thirty (30) calendar days from the date of the initial conference, the mediator may close and terminate the mediation proceedings, unless there is a written request from all parties to extend the process. In no case shall the extension exceed thirty (30) days.

Sec. 5. Failed Mediation. In case the parties fail to reach a settlement agreement, the mediator shall prepare a memorandum report stating the reasons for such failure and recommending the closure of the mediation docket by the records office and the endorsement of the complaint, grievance, or request for assistance to the proper office or bureau for appropriate action.

Rule 3 The Parties

Sec. 1. Appearance of Parties. The parties shall appear in person. In the case of agencies, organizations, or corporate entities, the parties may appoint representatives to act for and on their behalf at the mediation. The parties shall confer upon their representatives the necessary full authority or special power of attorney to enter into mediation and sign agreements.

Sec. 2. Appearance of Legal Counsel. The parties may appear with or without legal counsel. The absence or unavailability of legal counsel shall not be a bar to the conduct of proceedings. A party may consult his legal counsel

who, however, shall not be allowed to actively participate during the proceedings.

Rule 4 The Mediator

Sec. 1. Selection of Mediator. The Assistant Ombudsman shall select the mediator by raffle. In no case shall the Evaluating Officer act as the mediator of the case he evaluated. In the event that any of the parties has reasons to object to the selection, the Assistant Ombudsman shall select another mediator by the same method.

Sec. 2. Disclosure of Interest. The mediator shall immediately disclose to the Assistant Ombudsman through a memorandum, as well as to the parties, all circumstances that are likely to create an impression of bias or prevent him from acting promptly. Upon receipt of the disclosure, the Assistant Ombudsman shall select another mediator by raffle, unless all parties decide otherwise.

Sec. 3. Duties. The mediator shall:

- a) abide by the terms of the Mediation Agreement and the Code of Conduct for Mediators;
- b) facilitate the negotiations between the parties toward a mutually acceptable solution;
- c) assist the parties in drawing up any written settlement agreement

The mediator shall not make any ruling, finding, or recommendation with respect to the dispute even with the express request of all the parties involved.

Sec. 4. Mediation Conference; Private Caucus. The mediator may conduct joint conferences with all, or private caucuses with each, of the parties during the mediation. However, he shall not meet with any party at any time after the initial conference without notice to the other.

Rule 5 Confidentiality

Sec. 1. Confidentiality of Proceedings. To encourage the spontaneity conducive to effective communication, which enhances the possibility of successful mediation efforts, the mediation proceedings and all its incidents shall be kept strictly confidential. No transcript or formal record or any audio-visual recording shall be made of the proceedings. The mediator, nevertheless, may take down personal notes which shall not form part of the records of the case and which shall, upon the termination of the proceedings, be immediately disposed of.

Sec. 2. Confidentiality Issues to be Discussed. The mediator shall discuss issues of confidentiality with the parties during the initial conference, particularly its scope and extent with reference to any private caucus that the mediator may hold with a party.

Sec. 3. Privilege of Confidentiality. Information obtained through mediation proceedings shall be subject to the following principles and guidelines:

- (a) Information obtained through mediation shall be privileged and confidential;
- (b) A party or a mediator may refuse to disclose and may prohibit any other person from disclosing confidential information;
- (c) Confidential information shall not be subject to discovery and shall be inadmissible in any adversarial proceeding, whether judicial or quasi-judicial. However, evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its use in a mediation;
- (d) In an adversarial proceeding, the following persons involved or previously involved in a mediation may not be compelled to disclose confidential information obtained during the mediation:
 - i. the parties to the dispute;
 - ii. the mediator or mediators;
 - iii. the counsel for the parties;
- (e) A mediator cannot testify on confidential information gathered in mediation.

Sec. 4. Exception to the Privilege of Confidentiality. There is no privilege against disclosure under Section 3 of this Rule if the mediation communication is:

- (a) in an agreement evidenced by a record authenticated by all parties to the agreement;
- (b) available to the public;
- (c) a threat or statement of a plan to inflict bodily injury or commit a crime of violence;
- (d) intentionally used to plan a crime, attempt to commit, or commit a crime, or conceal an ongoing crime or criminal activity;
- (e) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator in a proceeding; or
- (f) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a party, non-party participant, or representative of a party based on conduct occurring during a mediation.

Sec. 5. Waiver of Privilege. A privilege arising from the confidentiality of information may be waived in writing or orally during the mediation proceedings by the mediator or the mediation parties.

Sec. 6. Prohibitions; Exceptions. A mediator may not make a report, assessment, evaluation, recommendation, finding, or other communication

regarding a mediation to a court or agency or other authority that may make a ruling on a dispute that is the subject of a mediation, except:

- (a) to state that the mediation occurred or terminated, or that a settlement was reached;
- (b) as permitted to be disclosed under Section 4.

Rule 6

Settlement Agreement

Sec. 1. Execution and Enforcement of Settlement Agreement. A settlement agreement following successful mediation shall be prepared and signed by the parties with the assistance of their respective counsel, if any, and by the mediator.

The parties and their respective counsel shall endeavor to make the terms and conditions of the settlement agreement complete and to stipulate adequate provisions for the contingency of breach and the possibility of conflicting interpretations of its provisions.

If the parties so desire, they may deposit such settlement agreement with the appropriate Clerk of a Regional Trial Court of the place where one of the parties resides. Where there is a need to enforce the settlement agreement, a petition may be filed by any of the parties with the same court.

Rule 7

Mediation of Pending Cases

Sec. 1. Referral to Mediation of Pending Cases. Cases classified under Section 5 of Rule 1, which are pending preliminary investigation or administrative adjudication, but prior to submission for resolution or decision, shall be indorsed for mediation. This rule shall also apply to cases pending fact-finding investigation where there is a known or identified complaining party.

The investigating officer to whom the pending case was assigned shall prepare a memorandum report addressed to the Assistant Ombudsman of the Preliminary Investigation, Administrative Adjudication and Monitoring Office or the Field Investigation Office, or to the Assistant Ombudsman for the area or sectoral office concerned recommending the endorsement of the case for mediation. He shall retain, however, custody of the original case records.

The period during which the case is undergoing mediation shall be excluded from the regular and mandatory period for the termination of the preliminary investigation and administrative adjudication.

Sec. 2. Applicable Rules. The conduct of mediation of pending cases shall be governed by the preceding rules as may be applicable.

Sec. 3. Settlement Agreement in Pending Criminal or Administrative Case; Provisional Dismissal. In case the parties arrive at a settlement agreement, the mediator shall prepare a memorandum report addressed to the Assistant Ombudsman of the Preliminary Investigation, Administrative Adjudication and Monitoring Office or the Deputy Ombudsman

concerned informing him of the settlement agreement and the date agreed upon by the parties for the revival of the case which shall not exceed ninety (90) days from the date of the agreement, together with a recommendation for the provisional dismissal of the pending criminal or administrative case. The report shall be accompanied by a written request for the provisional dismissal of the case jointly signed by the parties or their duly authorized representatives.

The investigating officer shall henceforth issue an order for the provisional dismissal of the criminal and administrative case in accordance with existing Ombudsman rules of procedure.

Sec. 4. Provisional Dismissal Becoming Permanent; Motion to Revive. The provisional dismissal shall become permanent if no Motion to Revive the case, with proof of service upon the responding party, is filed by the complaining party on or before the date agreed upon by the parties, which shall not exceed ninety (90) days from the date of the settlement agreement. The running of the prescription period of the offense charged shall remain interrupted despite the order granting the provisional dismissal.

Sec. 5. Settlement Agreement in Cases for Fact-Finding Investigation. In the event the parties arrive at a settlement agreement, cases for fact-finding investigation referred for mediation shall be closed and terminated without prejudice to revival in case of non-compliance therewith.

Sec. 6. Failure of Mediation. In case the parties fail to arrive at a settlement agreement within the prescribed period, the mediator shall prepare a memorandum report stating the reasons for such failure and recommending the closure of the mediation docket by the records office and the return of the indorsed case to the originating office or bureau for resumption of the preliminary investigation, administrative adjudication, or fact-finding investigation.

Rule 8 Termination of Proceedings

Sec. 1. Withdrawal of Parties. Any of the parties may withdraw in writing from the mediation at any time during the mediation proceedings.

Sec. 2. Grounds for Termination. The proceedings shall terminate when:

- a) a party withdraws from mediation;
- b) a written settlement agreement is executed;
- c) no settlement agreement is reached.

Sec. 3. Motion for Re-Opening. As a rule, only one motion or request for the re-opening of mediation proceedings shall be entertained subject to the approval of the Assistant Ombudsman of the Public Assistance and Corruption Prevention Office in the Central Office or the area or sectoral office concerned.

Rule 9 Mediation Unit

Sec. 1. Mediation Unit to Monitor and Evaluate Implementation; Professional Training of Mediators. A Mediation Unit under the supervision

of the Assistant Ombudsman of the Public Assistance and Corruption Prevention Office shall be established to monitor and evaluate the implementation of the mediation program and the performance of the mediators. The unit shall maintain a roster of trained mediators, establish programs for their professional training and review of the Rules.

Suppletory Application of R.A. No. 9285

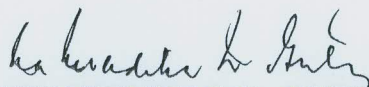
In all matters not provided in these Rules, the provisions of Republic Act No. 9285 (Alternative Dispute Resolution Law) shall apply in a suppletory character, or by analogy whenever practical and convenient.

Separability and Effectivity

If any provision of these Rules is held unconstitutional, other provisions not affected thereby shall remain valid and binding.

These Rules shall take effect fifteen (15) days after its publication in the Official Gazette, or in a newspaper of general circulation, and upon filing with the University of the Philippines Law Center of three (3) certified copies thereof.

For strict compliance.


MA. MERCEDITAS N. GUTIERREZ
Ombudsman *MA* 29 APR 2008