

MEMORANDUM OF AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This Memorandum of Agreement made and entered into by and between:

THE OFFICE OF THE OMBUDSMAN (OMB), with office address at Ombudsman Building, Agham Road, Diliman, Quezon City, represented by **Ombudsman Conchita Carpio Morales**,

- and -

THE DEPARTMENT OF JUSTICE (DOJ), with office address at Padre Faura Street, Manila, represented by **Secretary Leila M. De Lima**,

WITNESSETH:

WHEREAS, the Constitution and Republic Act No. 6770, otherwise known as The Ombudsman Act of 1989 provide that the Ombudsman (OMB) is the office primarily charged to implement the State policy to maintain honesty and integrity in the public service and take effective measures against graft and corruption;

WHEREAS, the Department of Justice (DOJ) is the principal agency of the government mandated to enforce the rule of law and investigate and prosecute offenders pursuant to Section 3, Chapter 1, Title III, Book IV of the Administrative Code of 1987 (Executive Order No. 292);

WHEREAS, the OMB and the DOJ have concurrent jurisdiction over complaints for crimes involving public officers and employees falling outside the exclusive jurisdiction of the Sandiganbayan (see Annex A for the Jurisdiction of Sandiganbayan);

WHEREAS, in the recently concluded dialogue between the OMB and the DOJ, several issues were raised relative to jurisdiction over cases subject of preliminary investigation and prosecution including coordination, reporting, and monitoring of cases filed before the OMB and the DOJ;

WHEREAS, in the course of the dialogue, both the OMB and the DOJ recognized the need to clarify the exercise of concurrent jurisdictions over criminal cases involving public officers and employees;

WHEREAS, there is a need to simplify the procedures to be observed by the OMB and the DOJ for a more efficient and effective investigation and prosecution of such cases, including enhanced monitoring of cases and improved coordination and reporting between the OMB and the DOJ;

WHEREFORE, recognizing the compelling need to address such issues and concerns, the DOJ and the OMB have agreed on the following:

I. Agreements

A. Jurisdiction

1. The OMB has primary jurisdiction in the conduct of preliminary investigation and inquest proceedings over complaints for crimes cognizable by the Sandiganbayan.
2. If, upon the filing of a complaint, the prosecution office of the DOJ determines that the same is for a crime falling under the exclusive jurisdiction of the Sandiganbayan, it shall advise the complainant to file it directly with the OMB: *Provided*, That in case a prosecution office of the DOJ receives a complaint that is cognizable by the Sandiganbayan, it shall immediately endorse the same to the OMB. *Provided further*, That in cases where there are multiple respondents in a single complaint and at least one respondent falls within the jurisdiction of the Sandiganbayan, the entire records of the complaint shall be endorsed to the OMB.
3. The OMB and the prosecution offices of the DOJ shall have concurrent jurisdiction over complaints for crimes involving public officers and employees falling outside the exclusive jurisdiction of the Sandiganbayan: *Provided*, That the office where such a complaint is filed for preliminary investigation shall acquire jurisdiction over the complaint to the exclusion of the other: *Provided further*, That the OMB may refer/endorse any complaint filed before it to any prosecution office of the DOJ having jurisdiction over the complaint.
4. The Prosecutor General or provincial/city prosecutors shall resolve cases referred by the OMB to the DOJ for preliminary investigation without need of approval from the OMB.
5. In cases where the preliminary investigation was conducted by the OMB but referred to the DOJ for prosecution, reinvestigation, if ordered by the court shall be conducted by the OMB.

Inquest

6. Inquest of complaints for crimes cognizable by the Sandiganbayan shall be conducted by the OMB: *Provided*, That inquest of such complaints for crimes committed outside the National Capital Judicial Region may be conducted by the city/provincial prosecutors who are authorized to approve and file the Information before the respective Clerks of Court of Regional Trial Courts, pursuant to Ombudsman Administrative Order No. 11-94.

Prosecution

7. The prosecution of cases investigated by the OMB but referred to the DOJ for prosecution shall be under the full control of the DOJ prosecutor. In case, however, the court orders a reinvestigation, the same should be referred to the OMB for disposition/resolution.

8. Actions on incidents during the trial, including those brought before the appellate courts, shall be in accordance with existing rules of OMB & DOJ.
9. The OMB or its sectoral offices shall transmit/endorse all case documents directly to the Provincial or City Prosecutor's Office which has jurisdiction over the case and shall furnish a copy of the endorsement and resolution to the Regional Prosecutor's Office or the Prosecutor General's Office in cases over which a Metro Manila City Prosecutor's Office has jurisdiction. *Provided*, That the OMB shall transmit to the DOJ the original copies of the Information and Resolution and certified true copies of all documentary evidence.
10. The OMB shall ensure compliance with the administrative requirements of the Clerks of Court as to the number of copies of the Information and attachments, filing fees, and others.
11. The OMB shall ensure that a motion for reconsideration has been resolved or the period for filing thereof has lapsed before endorsing an Information to the DOJ for filing with the proper court.
12. The OMB shall provide complete contact details of all witnesses in cases referred to the DOJ for prosecution.

B. Monitoring of Cases and Reporting

1. The DOJ and the OMB shall separately maintain a registry of cases referred to each other.
2. The OMB, when endorsing a case to the DOJ for filing of a complaint or Information with the proper court, shall include therein a *return envelope* and a *template form* for the details of the case to be accomplished by the DOJ prosecutor and returned to the originating OMB office.
3. For status updates of cases referred to the DOJ prior to this agreement, the OMB shall furnish the DOJ an inventory of the cases, and the DOJ shall provide the OMB the case number, the court where filed, the status, and a list of OMB cases not included in the inventory, if any.

II. Coordination Mechanism

The OMB and the DOJ will coordinate at two levels:

1. Designation of focal points for sharing of information

The OMB and the DOJ shall share lists of cases through the Central Records Division of the OMB Central Office and/or the Records Unit of sectoral offices and the Office of the Prosecutor General of the DOJ and information on specific cases through the prosecutors. Both will

maintain a registry of OMB cases turned over to the DOJ for prosecution.

2. Establishment of a Joint Technical Working Group (JTWG)

The OMB and the DOJ shall coordinate on matters relating to the partnership through a JTWG. The JTWG shall be responsible for revisiting the MOA, assessing information sharing and reporting concerns, and policy recommendations. It shall be composed of 10 representatives from each of the OMB and the DOJ, appointed by their respective principals who will likewise designate their respective Chairmen and secretariats.

III. Transitory Provisions

1. This Memorandum shall apply prospectively.
2. The OMB and the DOJ shall recommend the designation of special graft courts for low ranking officials: one each for the National Capital Region, Luzon, Visayas, and Mindanao. The designation of special courts is expected to assist the two agencies in the monitoring of cases and lower logistical costs from travel to different courts, at the same time to better manage security risks of prosecutors needing to go to far flung courts in pursuit of cases.

IV. Repealing Clause

This supersedes all previous MOA, circulars and other issuances promulgated by the OMB and DOJ to the extent that they are inconsistent with the foregoing.

V. Effectivity

This Memorandum of Agreement shall take effect one month after signing by the parties.

In Witness Whereof, the parties have hereunto set their hands on the date and at the place above-mentioned.

OFFICE OF THE OMBUDSMAN

DEPARTMENT OF JUSTICE

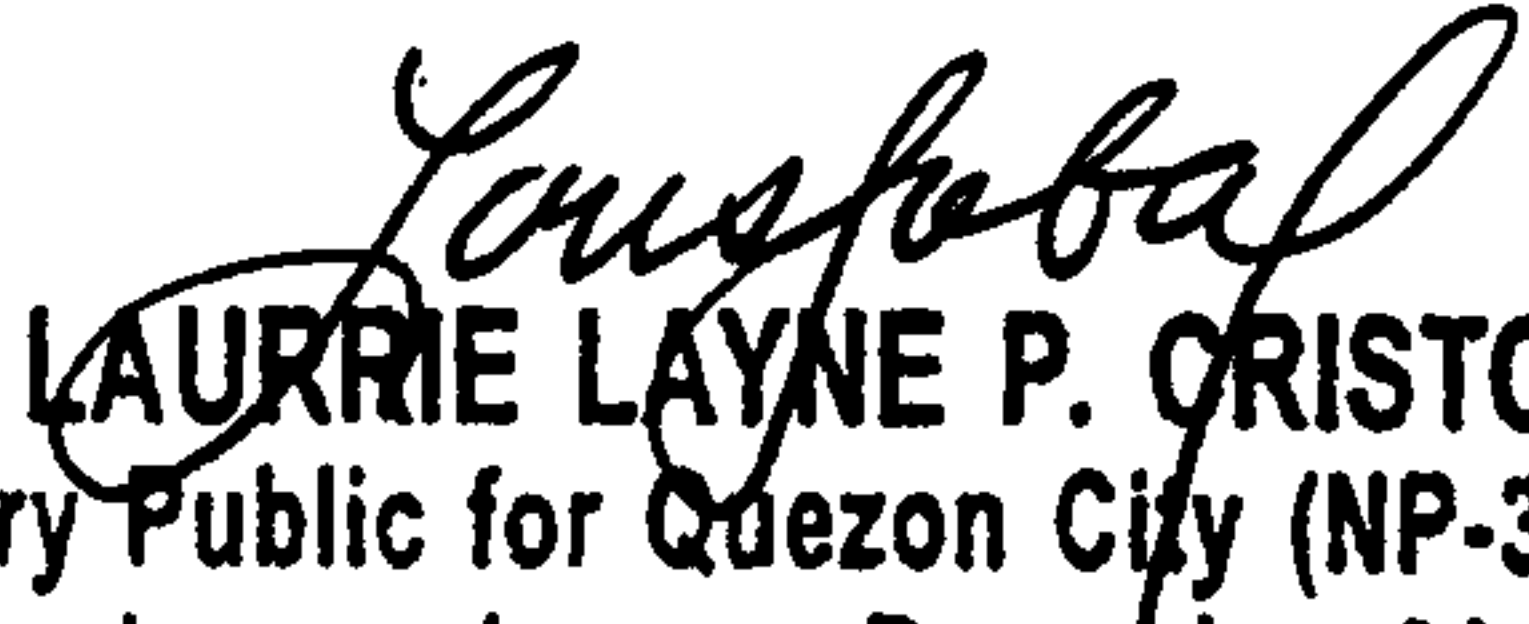
By:

By:


JUSTICE CONCHITA CARPIO MORALES


LEILA M. DE LIMA

Subscribed and sworn to before me this 29th day of March
2012 in Quezon City, Philippines.


ATTY. LAURRIE LAYNE P. CRISTOBAL
Notary Public for Quezon City (NP-338)
Commission expires on December 31, 2012
Roll No. 55446/IBP Lifemember No. 8728
PTR No. 6116733/01-12-12/Quezon City

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APPENDIX A

Sandiganbayan Jurisdiction¹

Sec.4 of RA 8249 provides that the Sandiganbayan shall have original exclusive jurisdiction over:□□

- I.) Violations of RA 3019 (Anti-graft and Corrupt Practices Law);
- II.) RA 1379 (Forfeiture of Illegally Acquired Wealth);
- III.) Crimes by public officers or employees embraced in Ch. II, Sec.2 Title VII, Bk. II of the RPC (Crimes committed by Public Officers) namely:
 - a) Direct Bribery under Art. 210 as amended by BP 871, May 29, 1985;
 - b) Indirect Bribery under Art. 211 as amended by BP 871, May 29, 1985;
 - c) Qualified Bribery under Art. 211-A as amended by RA 7659, Dec. 13, 1993;
 - d) Corruption of public officials under Art. 212□□where one or more of the accused are officials occupying the following positions in the government whether in a permanent, acting or interim capacity, at the time of the commission of the offense:□□
 - 1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade 27 and higher, of the Compensation and Position Classification Act of 1989 Republic Act No. 6758) specifically including:
 - i. Provincial governors, vice-governors, members of the sangguniang panlalawigan, provincial treasurers, assessors, engineers and other provincial department heads;
 - ii. City mayors, vice-mayors, members of the sangguniang panglungsod, city treasurers, assessors, engineers and other department heads;
 - iii. Officials of the diplomatic service occupying the position of consul and higher;
 - iv. Philippine Army and Air force colonels, naval captains and all officers of higher rank;
 - v. Officers of the PNP while occupying the position of Provincial Director and those holding the rank of Senior Superintendent or higher;
 - vi. City and provincial prosecutors and their assistants; officials and the prosecutors in the Office of the Ombudsman and special prosecutor;
 - vii. President, directors or trustees or managers of government owned or controlled corporations, state universities or educational institutions or foundations;□
 - 2) Members of Congress and Officials thereof classified as Grade 27 and up under the Compensation and Classification Act of 1989;

¹ Sandiganbayan website, *Jurisdiction of Sandiganbayan*, <http://sb.judiciary.gov.ph/about.html>.

- 3) Members of the Judiciary without prejudice to the provision of the Constitution;
 - 4) Chairmen and members of Constitutional Commissions, without prejudice to the provision of the Constitution;
 - 5) All other national and local officials classified as Grade 27 and higher under the Compensation and Position Classification Act of 1989.□□
- IV.) Other offenses or felonies whether simple or complexed with other crimes committed in relation to their office by the public officials and employees mentioned above;
- V.) Civil and Criminal Cases filed pursuant to and in connection with EO 1, 2, 14 & 14-A issued in 1986
- VI.) Petitions for issuance of Writ of mandamus, prohibition, certiorari, habeas corpus, injunction and other ancillary writs and processes in aid of its appellate jurisdiction; Provided, jurisdiction is not exclusive of the Supreme Court
- VII.) Petitions for Quo Warranto arising or that may arise in cases filed or that may be filed under EO 1, 2, 14 & 14- A
- VIII.) OTHERS provided the accused belongs to SG 27 or higher:□□
- a) Violation of RA 6713 - Code of Conduct and Ethical Standards
 - b) Violation of RA 7080 - THE PLUNDER LAW
 - c) Violation of RA 7659 - The Heinous Crime Law
 - d) RA 9160 - Violation of The Anti-Money Laundering Law when committed by a public officer
 - e) PD 46 referred to as the gift-giving decree which makes it punishable for any official or employee to receive directly or indirectly and for the private person to give or offer to give any gift, present or other valuable thing on any occasion including Christmas, when such gift, present or valuable thing is given by reason of his official position, regardless of whether or not the same is for past favors or the giver hopes or expects to receive a favor or better treatment in the future from the public official or employee concerned in the discharge of his official functions. Included within the prohibition is the throwing of parties or entertainment in honor of the official or employee or his immediate relatives.
 - f) PD 749 which grants immunity from prosecution to any person who voluntarily gives information about any violation of Art.210, 211 or 212 of the RPC, RA 3019, Sec.345 of the NIRC, Sec. 3604 of the Customs and Tariff Code and other provisions of the said Codes penalizing abuse or dishonesty on the part of the public officials concerned and other laws, rules and regulations penalizing graft, corruption and other forms of official abuse and who willingly testifies against the public official or employee subject to certain conditions.□□