

Administrative Order No. 07

RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN

Pursuant to the authority vested in the Office of the Ombudsman under Sections 18, 23 and 27 of Republic Act. No. 6770, otherwise known as "The Ombudsman Act of 1989" the following Rules of Procedure of the Office of the Ombudsman are hereby prescribed and promulgated:

Rule 1 PRELIMINARY PROVISIONS

Section 1. Title - These rules shall be known as the RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN.

Section 2. Coverage - These rules shall apply to all criminal and administrative complaints, grievances or requests for assistance and such other matters cognizable by the Office of the Ombudsman.

Section 3. Form of complaints, grievances or requests for assistance. Complaints may be in any form, either verbal or in writing. For a speedier disposition of the complaint, however, it is preferable that it be in writing and under oath. A complaint which does not disclose the identity of the complainant will be acted upon only if it merits appropriate consideration, or contains sufficient leads or particulars to enable the taking of further action.

Grievances or requests for a assistance may likewise be verbal or in writing. In any case, the requesting or complaining party must indicate his address and telephone number, if any.

Rule II PROCEDURE IN CRIMINAL CASES

Section 1. Grounds - A criminal complaint may be brought for an offense in violation of R.A. 3019, as amended, R.A. 1379 as amended, R.A. 6713, Title VII, Chapter II, Section 2 of the Revised Penal Code, and for such other offenses committed by public officers and employees in relation to office.

Section 2. Evaluation - Upon evaluating the complaint, the investigating officer shall recommend whether it may be:

- a) dismissed outright for want of palpable merit;
- b) referred to respondent for comment;
- c) indorsed to the proper government office or agency which has jurisdiction over the case;
- d) forwarded to the appropriate office or official for fact-finding, investigation;
- e) referred for administrative adjudication; or
- f) subjected to a preliminary investigation.

Section 3. Preliminary investigation; who may conduct. Preliminary Investigation may be conducted by any of the following:

- 1) Ombudsman Investigators;
- 2) Special Prosecuting Officers;
- 3) Deputized Prosecutors;
- 4) Investigating Officials authorized by law to conduct preliminary investigations or
- 5) Lawyers in the government service, so designated by the Ombudsman.

Section 4. Procedure - The preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan and Regional Trial Courts shall be conducted in the manner prescribed in Section 3, Rule 112 of the Rules of Court, subject to the following provisions:

a) If the complaint is not under oath or is based only on official reports, the investigating officer shall require the complainant or supporting witnesses to execute affidavits to substantiate the complaints.

b) After such affidavits have been secured, the investigating officer shall issue an order, attaching thereto a copy of the affidavits and other supporting documents, directing the respondents to submit, within ten (10) days from receipt thereof, his counter-affidavits and controverting evidence with proof of service thereof on the complainant. The complainant may file reply affidavits within ten (10) days after service of the counter-affidavits.

c) If the respondents does not file a counter-affidavit, the investigating officer may consider the comment filed by him, if any, as his answer to the complaint. In any event, the respondent shall have access to the evidence on record.

d) No motion to dismiss shall be allowed except for lack of jurisdiction. Neither may a motion for a bill of particulars be entertained. If respondents desires any matter in the complainant's affidavit to be clarified, the particularization thereof may be done at the time of clarificatory questioning in the manner provided in paragraph (f) of this section.

e) If the respondents cannot be served with the order mentioned in paragraph 6 hereof, or having been served, does not comply therewith, the complaint shall be deemed submitted for resolution on the basis of the evidence on the record.

f) If, after the filing of the requisite affidavits and their supporting evidences, there are facts material to the case which the investigating officer may need to be clarified on, he may conduct a clarificatory hearing during which the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine the witness being questioned. Where the appearance of the parties or witnesses is impracticable, the clarificatory questioning may be conducted in writing, whereby the questions desired to be asked by the investigating officer or a party shall be reduced into writing and served on the witness concerned who shall be required to answer the same in writing and under oath.

g) Upon the termination of the preliminary investigation, the investigating officer shall forward the records of the case together with his resolution to the designated authorities for their appropriate action thereon.

h) No information may be filed and no complaint may be dismissed without the written authority or approval of the Ombudsman in cases falling within the jurisdiction of the Sandiganbayan, or of the proper Deputy Ombudsman in all other cases.

Section 5. Cases falling under the jurisdiction of municipal trial courts. - Cases falling under the jurisdiction of the Office of the Ombudsman which are cognizable by municipal trial courts, including those subject to the Rule on Summary Procedure may only be filed in court by information approved by the Ombudsman or the proper Deputy Ombudsman.

Section 6. Notice to parties. - The parties shall be served with a copy of the resolution as finally approved by the Ombudsman or by the proper Deputy Ombudsman.

Section 7. Motion for reconsideration -

a) Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, the same to be filed within five (5) days from notice thereof with the Office of the Ombudsman, or the proper Deputy Ombudsman as the case may be, with corresponding leave of court in cases where information has already been filed in court;

b) The filing of a motion for reconsideration/reinvestigation shall not bar the filing of the corresponding information in Court on the basis of the

finding of probable cause in the resolution subject of the motion. (As amended by Administrative Order No. 15, dated February 16, 2001)

*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 RA 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, RA 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

*(As amended by Administrative Order No. 17, dated September 7, 2003. Published in the Official Gazette on Nov. 3, 2003, Vol. 99, No. 44.)

the complainant, and shall be ordered to file his counter-affidavits 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 thru the compulsory process of subpoena ad testificandum and subpoena duces tecum;
- g) The following pleading 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) In 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 to exercise his authority under Section 15, paragraph (3) of RA 6770.

RULE IV
PROCEDURE IN GRIEVANCES/REQUEST FOR ASSISTANCE

Section 1. Grievance or request for assistance; nature of - A grievance or request for assistance may consist of a complaint or request seeking redress or relief concerning an act or omission of public official or employee, office or agency alleged to be unreasonable, unfair, oppressive, discriminatory, improper or inefficient, and which does not necessarily amount to a criminal or administrative offense.

Section 2. By whom handled. - Grievance or request for assistance shall be acted upon by the Public Assistance Office in the Central Office of the Ombudsman, or in the Office of the respective Deputy Ombudsman.

Section 3. Action thereon. - A grievance or request for assistance shall be acted upon immediately upon receipt.

- a) Where the grievance or request for assistance appears to be manifestly frivolous, vexatious, or made in bad faith, or where it involves a matter purely between private parties, the same may be dismissed outright and the complainant/requesting party informed of the reasons for such dismissal;
- b) Where the redress, relief or assistance sought may be acted upon by another office, the same may be referred to the office concerned, with the Public Assistance Office following it up in behalf of the complainant;
- c) In all other cases which the Office of the Ombudsman may take cognizance of, the procedure in the following section shall be observed.

Section 4. Procedure. -

- a) If the grievance or request is relatively simple and/or requires immediate action, the same may be acted upon by telegram, telephone, or other means of communication or given personal attention by going to the office or agency concerned.
- b) Whenever deemed necessary or advisable, a copy of the grievance or request for assistance, together with pertinent documents shall be sent to the public official, employee or agency concerned, copy furnished its head and the Resident Ombudsman, if any, for the taking of immediate remedial action; or, if the relief requested may not be complied with, to submit a written explanation therefore.
- c) If such explanation is found satisfactory, and/or appropriate action had already been taken on the grievance or request, the same shall be dismissed and the parties informed accordingly.
- d) The Public Assistance Office may arrange a conference between the complainant/requesting party, and the public official concerned with a view to a satisfactory and expeditious resolution of the grievance/request.
- e) Upon consideration of the facts or information gathered, a resolution on the grievance or request shall be made within two (2) days of which the parties shall be notified, and appropriate steps taken to insure compliance therewith.

Section 5. Effect of non-compliance. - Any delay or refusal to comply with the referral or directive of the Ombudsman or any of the deputies shall constitute a ground for administrative disciplinary action against the officer or employee to whom it was addressed pursuant to Section 26, paragraph (4) of R.A. 6770

RULE V
GENERAL PROVISIONS

Section 1. Immunity from prosecution. -

a) Any person whose testimony or production of documents or other evidence is necessary to determine the truth in any inquiry, hearing, or proceeding being conducted by the Office of the Ombudsman or under its authority in the performance or furthermore of its constitutional functions and statutory objectives, including preliminary investigation, may be granted immunity from criminal prosecution by the

Ombudsman, upon such terms and conditions as the Ombudsman may determine, taking into account the pertinent provisions of the Rules of Court.

Such immunity may be granted upon application of the concerned party, the investigating, hearing, or prosecuting officer, or at the instance of the Ombudsman. Provided, however, that in all cases, the concerned party shall execute an affidavit reciting the substance of his proposed testimony and/ or the nature of the evidence in his possession.

b) In all hearings, inquiries, and proceedings of the Office of the Ombudsman, including preliminary investigation of offenses, no person subpoenaed to testify as a witness shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda and/ or other records on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to prosecution: *Provided*, that no person shall be prosecuted criminally for or on account of any matter, concerning which he is compelled to testify and produce evidence, after having claimed the privilege against self-incrimination.

c) The grant of immunity from criminal prosecution under the preceding paragraphs may be revoked upon proper notice in the event that person granted immunity subsequently retracts his statement, or fails or refuses to testify or produce evidence in court in accordance with the sworn statement upon which his immunity was granted.

Neither shall such grant of immunity exempt the party concerned from criminal prosecution for perjury or false testimony, nor shall he be exempt from demotion or removal from office.

Section 2. Public disclosure; exemption. - When circumstances so warrant and with due prudence, the Office of the Ombudsman may publicize in a fair and balanced manner the filing of a complaint, grievance, or request for assistance, and the final resolution, decision or action taken thereon: *Provided*, however, that prior to such final action, no publicity shall be made of matters which may adversely affect national security or public interest, prejudice the safety of witnesses or the disposition of the case, or unduly expose persons complained against to ridicule or public censure.

Section 3. Rules of Court, application. - In all matters not provided in these rules, the Rules of Court shall apply in a suppletory character, or by analogy whenever practicable and convenient.

Section 4. Effectivity - These rules shall take effect following the completion of their publication in the Official Gazette or in three (3) newspapers of general circulation in the Philippines, one of which is printed in the national language.

They shall govern all cases brought after they take effect and to further proceedings in cases then pending, except to the extent that their application would not be feasible or would cause injustice to any party.

Section 5. Separability clause. - If any provision of these rules is held unconstitutional, other provisions not affected thereby shall remain valid and binding.

Makati, Metro Manila, April 10, 1990.

(sgd) CONRADO M. VASQUEZ
Ombudsman