

Administrative Order No. 08

CLARIFYING AND MODIFYING CERTAIN RULES OF PROCEDURE

It has been observed that there are certain aspects in the handling of Ombudsman cases which have been the subject of doubts and confusion, resulting in unnecessary delays in the disposition of such cases. To clarify such matters, the following guidelines are hereby promulgated:

1. What are Ombudsman cases?

A complaint filed in or taken cognizance of by the Office of the Ombudsman charging any public officer or employee including those in the government-owned or controlled corporations, with an act or omission alleged to be illegal, unjust, improper or inefficient is an Ombudsman case. Such a complaint may be the subject of criminal or administrative proceedings, or both.

For purposes of investigation and prosecution, Ombudsman cases involving criminal offenses may be subdivided into two classes, to wit, (1) those cognizable by the Sandiganbayan, and (2) those falling under the jurisdiction of the regular courts. The difference between the two, aside from the category of the courts wherein they are filed, is on the authority to investigate, as distinguished from the authority to prosecute, such cases.

The power to investigate or conduct a preliminary investigation in any Ombudsman case may be exercised by any investigator or prosecutor of the Office of the Ombudsman, or by any Provincial or City Prosecutor or their assistants, either in their regular capacities or as deputized Ombudsman prosecutors.

The prosecution of cases cognizable by the Sandiganbayan shall be under the direct exclusive control and supervision of the Office of the Ombudsman. In cases cognizable by the regular Courts, the control and supervision by the Office of Ombudsman is only in Ombudsman cases in the sense defined above. The law recognizes a concurrence of jurisdiction between the Office of the Ombudsman and other investigative agencies of the government in the prosecution of cases cognizable by regular courts.

2. Necessity for Ombudsman clearance.

The need of getting a clearance from the Office of the Ombudsman before a complaint involving a public officer or employee may be investigated was imposed in cases cognizable by the Sandiganbayan. Such requirement has been done away with by the enactment of Republic Act 6770, otherwise known as the Ombudsman Act of 1989. In Section 15 paragraph (1) of said law, the jurisdiction of the Office of the Ombudsman to investigate cases cognizable by the Sandiganbayan is stated to be "primary", and no longer "exclusive", subject to the authority of the Office of the Ombudsman to take over the investigation of such cases at any stage of the proceeding.

3. Offenses in "relation to office."

It has been noticed that several cases have been dismissed, or recommended for dismissal, for alleged lack of jurisdiction upon a finding that the offense was not committed by the respondent in relation to his office. This view has resulted in nullifying preliminary investigations conducted by regular or deputized Ombudsmen Investigators in such cases, thereby necessitating another preliminary investigation to be conducted by the appropriate regular prosecutors or Ombudsman investigators as the case may be. This handling of Ombudsman cases must have to be discontinued not merely because of its unfavorable results, but basically due to its not being in accordance with the applicable laws. A deputized Ombudsman prosecutor does not have to determine whether he is investigating a complaint filed against a public official or employee in his capacity as a regular prosecutor or as a deputized Ombudsman prosecutor. It must be remembered that all prosecutors are now deputized Ombudsman prosecutors.

There is no law which limits the jurisdiction of the Office of the Ombudsman to cases against public officers and employees involving acts or omissions in "relation to their office". Such a qualification is imposed only with respect to the jurisdiction of the Sandiganbayan over crimes included in section 4 (b) of Presidential Decree No. 1606, as amended by Presidential Decree No. 1861. Stated differently, the need for showing that the crime is office related is only if the information for the crime involved is to be filed in the Sandiganbayan. If the case is for a violation of Republic Act 3019 or Republic Act 1379, or any of the crimes included in Chapter Two, Section Two, Title Seven of the Revised Penal Code (Arts. 210 to 212), the element of the offense being in relation to office is an inherent ingredient, and does not have to be shown independently of the crime charged.

4. To whom resolutions are submitted.

Resolutions in Ombudsman cases against public officers and employees prepared by a deputized assistant prosecutor shall be submitted to the Provincial or City prosecutor concerned who shall, in turn, forward the same to the Deputy Ombudsman of the area with his recommendation for the approval or disapproval thereof. The Deputy Ombudsman shall take appropriate final action thereon, including the approval of its filing in the proper regular court or the dismissal of the complaint, if the crime charged is punishable by prison correctional or lower, or fine of not more than P6,000.00 or both. Resolutions involving offenses falling within the jurisdiction of the Sandiganbayan shall be forwarded by the Deputy Ombudsman with his recommendation thereon to the Office of the Ombudsman.

5. Procedure in preliminary investigation of Ombudsman cases.

The Preliminary investigation of an Ombudsman case does not have to be conducted strictly in accordance with Section 3, Rule 112 of the Rules of Court. Said rule shall be applied as modified by Rule II of Administrative Order No. 07 of the Office of the Ombudsman. Particular attention is directed to the provisions thereof which are not exactly in conformity with Section 3, Rule 112 of the Rules of Court, such as those on the (1) issuance of an order in lieu of subpoena for the filing of counter-affidavits; (2) prohibition against a motion to dismiss, motion for a bill of particulars, and second motion for reconsideration or

reinvestigation; (3) manner of conducting clarificatory questioning; and the (4) form of affidavits and counter-affidavits.

It is to be understood, however that the preliminary investigation of an Ombudsman case in accordance with Rule 112 of the Rules of Court is perfectly valid. The changes in such procedure effected by Administrative Order No. 07, are designed merely to expedite the process preliminary investigation and to conform with the provisions of Republic Act. No. 6770.

6. *Modification of existing rules.*

Any provision of Administrative Order No. 07, or of any other issuance by the Office of the Ombudsman shall be deemed superseded or otherwise modified insofar as it is inconsistent herewith.

Strict adherence to these amendatory rules of procedure is hereby enjoined.

Manila, November 2, 1990.

(sgd.) **CONRADO M. VASQUEZ**
Ombudsman