

[NAPOLCOM MEMORANDUM CIRCULAR NO. 2002-13, December 11, 2002]

PRESCRIBING THE RULES OF PROCEDURE IN THE INVESTIGATION AND DISPOSITION OF ADMINISTRATIVE COMPLAINTS AGAINST UNIFORMED PERSONNEL OF THE PHILIPPINE NATIONAL POLICE BEFORE THE INTERNAL AFFAIRS SERVICE, INCLUDING THE ADMINISTRATIVE OFFENSES AND PENALTIES APPROPRIATE THERETO

WHEREAS, pursuant to Section 39 of RA No. 8551, otherwise known as the "Philippine National Police Reform and Reorganization Act of 1998", there is created an Internal Affairs Service (IAS) in the Philippine National Police (PNP);

WHEREAS, as expressly mandated in the law, IAS has among its functions, the authority to investigate complaints and gather evidence in support of an open investigation; to conduct summary hearings on PNP members facing administrative charges; and to conduct *motu proprio*, automatic investigation on certain cases specified in the aforementioned section;

WHEREAS, the Commission on August 11, 1999 issued Memorandum Circular No. 99-006, where under number 1 thereof, it is stated that IAS is not a disciplinary authority, and therefore, its recommendations shall be submitted to the proper PNP Disciplinary Authority for disposition or adjudication; with the further declaration that the conduct of pre-charge investigation on complaints brought against PNP members directly with the different disciplinary authorities shall be undertaken at the national level by the Directorate for Investigation and Detective Management; at the regional level by the regional intelligence and investigation division and through the investigation division at equivalent units; and with notice that any PNP disciplinary authority mentioned in Sections 41 and 42 of RA No. 6975 may authorize IAS to conduct summary hearing or reception of evidence subject to final disposition by the appropriate Disciplinary Authority;

WHEREAS, in order to ensure uniformity in the investigation of complaints and strict adherence to the requirements of administrative due process, it is imperative to issue these rules of procedure for the observance of all concerned.

NOW, THEREFORE, the Commission, in the exercise of its administration and control function over the PNP has resolved to prescribe as it hereby prescribes these rules of procedure; including the administrative offenses and penalties appropriate thereto:

RULE 1
General Provisions

SECTION 1. *Definition of Terms.* — The relevant terms as used in these Rules shall be understood to mean as follows:

- a. **Administrative Due Process** — the right of a party interested or affected to notice and hearing to enable him to present his side and submit evidence in support thereof. In essence, due process pertains to the opportunity of the party impleaded to be heard.
- b. **Affidavit** — a written declaration or statement of facts, made voluntarily under oath or affirmation before an officer authorized to administer such oath or affirmation.
- c. **Answer** — a responsive pleading containing the respondent's negative and affirmative defenses.
- d. **Breach of Internal Discipline** — any offense committed by a member of the PNP involving and affecting order and discipline within the police organization.
- e. **Complaint** — a written and sworn statement regarding a wrong, grievance or injury sustained by a person.
- f. **Decision** — it is the written disposition of a case personally and directly prepared and signed by the deciding/disciplining authority stating clearly the findings of facts and the law applicable thereto. It shall also include a finding of the culpability or innocence of the respondent as well as the imposable penalty therefore.
- g. **Exoneration** — the finding made by the deciding/disciplining authority that respondent is not culpable of the charge.
- h. **Ex-Parte Investigation** — a proceeding conducted without the presence of either complainant or respondent PNP member.
- i. **Forum-Shopping** — the practice of filing several complaints arising from one and same cause of action and involving the same parties with the different disciplinary authorities.
- j. **Jurisdiction** — the authority vested by law to hear and decide a case.
- k. **Motu Proprio Investigation** — an investigation conducted by the IAS out of its own initiative/accord.
- l. **Nominal Complaint** — any officer who, by reason of his office or position, is required or authorized to institute and file an administrative complaint.
- m. **Probable Cause** — is the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the investigator, that the respondent is probably culpable thereof.
- n. **Reglementary Period** — the period required by law to perform a specific act. In the computation of the period of time, the first day shall be excluded and the last day included unless it be a Saturday, a Sunday or a legal holiday, in which case the period shall run until the end of the next day which is neither a Saturday, a Sunday or a legal holiday.
- o. **Substantial Evidence** — that amount of evidence which to the unprejudiced mind is sufficient to support a decision.

p. **Summary Hearing** — it is an abbreviated administrative proceeding conducted consistent with due process to determine the culpability or innocence of the respondent.

q. **Summons** — a written order informing the respondent that he is charged of an offense and directing him to file his Answer and other responsive pleadings.

r. **Venue** — the place where the investigation is to be conducted.

SECTION 2. Venue. — A complaint involving offenses cognizable by the IAS shall be filed in the national, regional, provincial/city office where the offenses were committed.

However, a request for a transfer of the venue of an administrative case from one province to another within the same region shall be approved by the regional IAS office of that region. A request for transfer of venue outside of the region shall be referred to the national IAS office for approval.

SECTION 3. Prohibition Against Forum Shopping or Multiple Filing of Complaints.

— To avoid multiplicity of suits for the same cause of action, the complainant shall certify under oath in his pleading, or in an affidavit annexed thereto and simultaneously filed therewith, to the truth of the following facts and undertakings:

a. That he/she has not filed or commenced any other action or proceeding involving the same in other disciplinary forum;

b. That to the best of his/her knowledge, no such action or proceeding is pending in other police administrative disciplinary authority;

c. That if there is any such action or proceeding which is either pending or may have been terminated, he/she must state the status thereof; and

d. That if he/she should thereafter learn that a similar action or proceeding has been filed or is pending before any other police disciplinary authority, he/she undertakes to report such fact within five (5) days therefrom to the disciplinary authority wherein the original complaint or pleading and sworn certification contemplated herein have been filed.

Any willful and deliberate forum shopping by the complainant to ensure a favorable action or advantage over the respondent, as well as the inclusion of a false certification in connection thereof, shall be a sufficient basis to dismiss the complaint.

SECTION 4. Conduct of Pre-Charge Investigation. — A pre-charge investigation shall be conducted in all administrative complaints filed with the IAS, except, where a formal complaint is already prepared and duly accompanied by the affidavit and sworn statements of witnesses and other documentary evidence in support thereof in which case, the same shall immediately be forwarded to the Legal Affairs Division of the regional or national IAS office for the conduct of formal hearing.

SECTION 5. When Respondent is a Presidential Appointee. — Administrative complaints or cases against police officers with the rank of Senior Superintendent

and higher, shall be investigated in accordance with these Rules after prior clearance from the Office of the President through the Executive Secretary pursuant to Presidential Memorandum Order No. 41 dated March 7, 2001; however, the Disciplinary Authority shall submit the entire records of the case with his Investigation report to the Office of the President, through the National Police Commission, for final disposition.

For this purpose, the required Presidential Clearance shall be secured after the filing of the formal complaint but prior to the commencement of the formal hearing.

RULE II

Organization, Powers and Jurisdiction

SECTION 1. *Organization.* — The Inspector General shall organize and establish the national, regional and provincial offices of IAS in order to effectively and efficiently carry out its mandated functions.

SECTION 2. *Powers and Functions.* — IAS shall perform the following powers and functions.

- 2.a pro-actively conduct inspections and audits on PNP personnel, and units;
- 2.b investigate complaints and gather evidence in support of an open investigation;
- 2.c conduct summary hearings on PNP members facing administrative charges;
- 2.d submit a periodic report on the assessment, analysis, and evaluation of the character and behavior of PNP personnel and units to the Chief PNP and the Commission;
- 2.e file appropriate criminal cases against PNP members before the court as evidence warrants and assist in the prosecution of the case;
- 2.f provide assistance to the Office of the Ombudsman in cases involving the personnel of the PNP.

SECTION 3. *Jurisdiction.* — IAS shall, motu proprio, conduct automatic investigation on any of the following cases; to wit:

- 3.a incidents where a police personnel discharges a firearm;
- 3.b incidents where death, serious physical injury, or any violation of human rights occurred in the conduct of police operation;
- 3.c incidents where evidence was compromised, tampered with, obliterated, or lost while in the custody of police personnel;
- 3.d incidents where a suspect in the custody of the police was seriously injured;
- 3.e incidents where the established rules of engagement have been violated; and

3.f incidents where there is need to determine lapses in administration or supervision by an immediate superior or supervisor of the personnel being investigated.

RULE III Procedure

A. Pre-Charge Investigation

SECTION 1. Filing of Complaint. — A complaint whether initiated by a natural or juridical person against a uniformed member of the PNP shall be in writing and subscribed and sworn to by the complainant. It shall be accompanied by sworn statements or affidavits of witnesses and other documents in support thereof, including an affidavit of non-forum shopping.

As much as possible, the complaint must contain the following material facts:

- a. Full name and address of complainant
- b. Full name, rank and station or assignment of the respondent;
and
- c. A narration of the facts which shows the acts or omissions constituting the offense allegedly committed by the respondent.

It may also be initiated motu proprio by the national, regional, provincial, district or city IAS, or, as may be directed by the Inspector General.

All administrative complaints whether filed by a private person or motu proprio by the IAS shall be prosecuted under the heading "In Re Summary Proceedings Against _____" (Respondent)

SECTION 2. Action on the Complaint. — (a) Within three (3) days from receipt of the complaint, or submission of the investigation report in case of motu proprio investigation, the investigating IAS shall notify the police officer complained of, attaching in the notice the complaint, sworn statements and other supporting documents directing him to submit his answer or counter-affidavit and other documents in support of his defense within five (5) days from receipt of said notice.

b. The investigating IAS shall, within three (3) days from receipt of the answer or counter-affidavit, evaluate the records for the purpose of determining the existence of probable cause, which shall not exceed five (5) working days. However, the investigating IAS may require the appearance of the parties for clarificatory and other relevant questioning which shall be finished within the same period. In the case of the Provincial, District or City IAS, it shall submit its pre-charge investigation report and records of the case to the Regional IAS office for automatic review.

c. The regional IAS office shall within three (3) days conduct an automatic review of the case. If it finds the existence of probable cause, the formal complaint and records of the case shall be forwarded to the designated Summary Hearing Officer for the conduct of formal hearing. However, if the regional IAS office finds that no probable cause exists, it shall dismiss the complaint with notice to the parties.