

[PNP MEMO CIRCULAR NO. 2007-015, November 23, 2007]

GUIDELINES ON PNP PERSONNEL APPEARING IN CONGRESSIONAL HEARINGS AND INVESTIGATIONS

I. REFERENCES:

- a. Executive Order 464 and Memorandum Circular 108;
- b. PNP Issuances on Appearance in Congressional Hearing; and
- c. Lawyer's Briefing on Congressional Investigations presided by Deputy Executive Secretary Manuel Gaité on July 18, 2007 at Mabini Hall, Malacañang.

II. PURPOSE:

This Circular aims to provide the proper guidelines to be followed to avert problems that may be encountered in the course of Congressional hearings and investigations and to ensure the security of confidential information vital to national interest and to safeguard the rights of persons appearing thereat.

III. SCOPE OF APPLICATION:

This Circular shall apply to all PNP Personnel who are required to appear/testify before a committee of either House of Representatives or Senate on any matter pertaining to their department and thus, are required to secure a prior guidance from the Office of the President.

IV. DEFINITION OF TERMS:

- a. Executive Privilege is the right of the President to withhold information from Congress, courts and the public which are sensitive in character. The power to invoke this privilege may also be delegated to the Executive Secretary with the premise that it is done "By the Order of the President".
- b. Congressional Hearing is a meeting or session of a Senate, House, Joint, or Special Committee of Congress, usually open to the public, to obtain information and opinions on proposed legislation, conduct an investigation, or evaluate/oversee the activities of a government department or the implementation of a law.
- c. Inquiry in aid of legislation may refer to the implementation or re-examination of any law or appropriation or in connection with any proposed legislation or the formulation of, or in connection with future legislation, or will aid in the review or formulation of a new legislative policy or enactment. They may also extend to any and all matters vested by the Constitution in the House of Representatives or the

Senate.

d. Sub-judice matter is a Latin term for "under judgment," means that a particular case or matter is currently under trial or being considered by a judge or court.

e. Question of Law when the doubt or difference arises as to what the law is on a certain state of facts. A question of law must not involve an examination of the probative value of the evidence presented by the litigants.

V. GUIDELINES:

1. The power of the President to invoke the Executive Privilege is an exemption to the compelling power of legislative inquiry. Its scope include conversations and correspondence between the President and other person on matters of privilege, state secrets, including military, diplomatic and other national security matters as well as information between inter-governmental agencies prior to conclusion of treaties and executive agreements, discussion in close-door cabinet meetings, and matters affecting national security and public order.

2. The following invitations DO NOT require guidance from the Office of the President:

- a. Hearings on Certified and Administration Bills;
- b. Budget hearings;
- c. Technical Working Group;
- d. Previously approved hearings;
- e. Legislative-Executive Oversight Committee hearings;
- f. Providing Technical assistance to members of Congress; and
- g. Confirmation hearings.

3. The Supreme Court decision in GUDANI vs. SENG (G.R. No. 170165, August 15, 2006) is NOT APPLICABLE and CANNOT BE INVOKED by members of the PNP. Unlike the AFP, the PNP belongs to the civilian armed component of the Government.

4. During Congressional hearings, the PNP officer appearing must avoid reference to EO 464 and MC 108 but instead refer to the decision of the Supreme Court in the case of Senate vs. Ermita (G.R. No. 160777, April 25, 2006) which provided some guidelines on the conduct of inquiry in aid of legislation among which are:

- a. Congress has the constitutional right to information in inquiries in aid of legislation;
- b. Congress has the power to compel its disclosure;
- c. The power may however be abused, hence subject to review by the courts;
- d. The Rules of Procedure that are being used by Congress must comply with the requirements of publication;
- e. The rights of persons appearing in the investigation must be respected;
- and
- f. The refusal to appear or speak in a congressional investigation may anchor on the Concept of Executive Privilege.

VI. PROCEDURES: