

[NFA SOP NO. SS-LG06, September 09, 1997]

REVISED RULES ON ADMINISTRATIVE PROCEEDINGS

These Revised Rules on Administrative Proceedings are hereby adopted and prescribed for the information, guidance and compliance of all concerned.

I

Objective

To come up with an updated, consistent and just basis for speedy investigation and resolution of administrative cases against NFA officials and employees.

II

Scope

This shall cover the administrative offenses classified into grave, less grave and light; application of penalties; functional responsibilities of concerned offices; and procedures followed from the filing of a complaint up to the filing of an appeal.

III

Bases

1. P.D. 4 as amended.
2. Omnibus Rules, Implementing Book V of EO 292

IV

Implementing Guidelines

A. General Provisions

1. *JURISDICTION* — The Administrator is the disciplining authority. As such, he shall have the authority to initiate preliminary investigations, file formal charges and conduct formal investigations and decide matters involving disciplinary action against officials and employees under his jurisdiction.

The Administrator may entrust the conduct of formal investigation of administrative cases to the Regional Managers or other officials with the issuance of Special Order, who shall then make the necessary report and recommendation to him within the period prescribed under these rules.

2. *DUE PROCESS*— No official or employee of the NFA shall be suspended or dismissed or otherwise penalized except for cause as provided by law and after due process.

3. *COMPLAINT* — No complaint against an official or employee shall be given due course, unless the same is subscribed and sworn to by the complainant. No action shall be taken on an anonymous complaint unless there is obvious truth or merit to the allegations set forth in the anonymous complaint.

4. *DEFINITION OF TERMS*

4.1 *Administrative Discipline* — an administrative tool designed as a control in inducing employees to conform to established rules. It generates in public officers and employees the development of moral values, skills and attitude for their effective participation in the institutional process of government. The imposition of penalties is not to punish but to correct.

4.2 *Aggravating Circumstances* — refer to those circumstances present in the commission of an offense charged that increase the penalty to be imposed.

4.3 *Mitigating Circumstances* — refer to those circumstances which if present in the commission of the offense charged, or utilized therein, do not entirely free the respondent from administrative liability, but merely serve to reduce the penalty to be imposed.

4.4 *Analogous Circumstances* — refer to those circumstances similar to any of the mitigating or aggravating circumstances that reduce or increase the penalty to be imposed.

4.5 *Due Process of Law* — is that which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial. It requires notice and opportunity to be heard before judgment is rendered. In administrative cases, the right to due process entitles the respondent:

a) To be informed of the charges against him as well as the evidence in support thereof;

b) To avail of the services of a counsel:

c) To answer the charge and submit evidence in his behalf:

d) To be afforded a formal investigation, if he so elects:

e) In case a formal investigation is held, to confront his accuser and witnesses;

f) To require the attendance of witnesses and the production of documentary evidence in his favor through the compulsory process of subpoena and subpoena duces tecum:

g) To receive a copy of the decision in its complete form.

4.6 *Anonymous Complaint* — a complaint that is unsigned or even if signed, the

person whose name appearing as complainant denies making such complaint or the identity of the signatory cannot be determined. It shall not, merit a fact-finding investigation unless there is obvious truth to such complaint.

4.7 *Complaint* — a written specification of charge.

4.8 *Prima Facie* — evidence of fact which, in law, is sufficient to establish the fact; self-evident.

4.9 *Formal Charge* — a written specification of charge or charges signed by the disciplining authority. It need not be sworn to.

4.10 *Preliminary Investigation* — a fact-finding investigation to determine if a prima facie case exists or if there is a valid justification of the complained action or inaction of an official or employee.

4.11 *Formal Investigation* — the conduct of the actual hearing wherein the parties are allowed to submit their evidence in support of their claims and defenses and to cross-examine the other party and his witnesses.

4.12 *Prosecution* — the means adopted to bring a supposed offender to justice and punishment after due process of law has been fully observed.

4-13 *Subpoena* — is a process directed to a person requiring him to attend and testify in an investigation.

4.14 *Subpoena duces tecum* — is a process directed to a person requiring him to attend an investigation and to bring with him any books, documents, or other things under his control,

4.15 *Exoneration* — the clearing from blame or guilt of the respondent employee for the charges filed against him.

4.16 *Inefficiency*— implies negligence, incompetence, ignorance and carelessness.

4.17 *Motu Propio* — on one's initiative.

4.18 *Habituality* — a condition of having been previously charged and found guilty of an administrative offense and again charged and found guilty of similar or another administrative offense.

4.19 *Incompetence* — lack of necessary qualification or fitness for the work. It manifests lack of adequate ability and fitness for that satisfactory performance of official duties by reason of the officer's vice or vicious habits. This refers to any physical, moral or intellectual quality, the lack of which substantially incapacitates one from performing the duties of an office.

4.20 *Conduct Prejudicial to the Best Interest of the Service* — a highly improper act, deficiency in prudence, discretion and judgment that tends to undermine people's faith and confidence in the government. It need not be connected with the performance of duty.

4-21 *Disloyalty* — is failure to resist a rebellion by all means under one's power, or continuing to discharge the duties of one's office under the control of the rebels or the acceptance of an appointment to an office under them.

4.22 *Disgraceful and Immoral Conduct* — an act that violates the basic norms of decency and morality and is repulsive to normal standards of decency, morality and decorum. It is willful, flagrant, or shameless, and shows a moral indifference to the opinion of the good and respectable members of the community.

4.23 *Dishonesty*— an absence of integrity, a disposition to betray, cheat, deceive or defraud, bad faith. It is a concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duties.

4.24 *Falsification of Official Documents* — is a misrepresentation certifying that a thing, fact or condition is true when it is not. Falsification is the commission of a deliberate falsehood with intent to deceive.

4.25 *Insubordination* — is failure to comply with lawful instructions of a superior officer or with standing office regulations.

4.26 *Misconduct* — includes such acts as amount to a breach of good faith and right action implicitly required of all officers, it is a transgression of some established and definite rule of action more particularly unlawful behavior or gross negligence by a public officer. It implies wrongful intention and not a mere error in judgment.

The word "grave" means important, weighty, momentous, not trifling. For grave misconduct to exist, there must be a reliable evidence showing that the acts complained of were corrupt or inspired by an intention to violate the law, or were in persistent disregard of well-known legal rules. Grave misconduct is flagrantly or shamefully wrong or improper conduct.

4.27 *Act Involving Moral Turpitude* — an act of baseness, vileness, or depravity in the private and social duties which a man owes his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between men or conduct contrary to justice, honesty, and modesty or good morals. It implies something immoral in itself regardless of the fact that it is punishable by law or not.

4.28 *Neglect of Duty* — a simplification of the phrase "neglect in the performance of official duty" It is the omission or refusal, without sufficient excuse, to perform an act or duty, which is the officer's legal obligation to perform.

4.29 *Nepotism* — any appointment made in favor of a relative of the appointing or recommending authority or of persons exercising immediate supervision over him. The word "relative" refers to one related to the appointing or recommending official within the third degree of consanguinity or affinity.

4.30 *Notoriously Undesirable* — a condition of being the object of wide or general attention for something reprehensible or scandalous. It requires a formal charge or complaint and that it should be for dishonesty, incompetence or other kinds of misconduct

4.31 *Oppression* — an act of cruelty, severity, unlawful exaction, domination or excessive use of authority. It is the exercise of unlawful power or other means in depriving an individual of his liberty or property against his will.

4.32 *Partisan Political Activity* — is an act designed to promote the election or defeat of a particular candidate or candidates to a public office. It is an active participation in a political campaign.

4.33 *Relevant Evidence* — is an evidence having any value in reason as tending to prove a fact in issue

4.34 *Summons* — a notice to a respondent to answer a formal charge or sworn complaint.

4.35 *Docket* — a calendar of cases awaiting judicial or quasi-judicial action

4.36 *Docketing* — designation of a specific case reference number in the Record of Cases with the Department of Legal Affairs.

B. Procedures and Grounds for Disciplinary Actions

These procedures shall cover administrative offenses classified into grave, less grave and light, application of penalties, functional responsibilities and procedures to be followed from filing of the complaint to the filing of the appeal. The classification of offenses is presented in Annex A.

1. PRELIMINARY INVESTIGATIONS

1.1 A preliminary investigation may be conducted upon receipt of a written complaint or *moto proprio* when it comes to the knowledge of the officer ordering it that an administrative offense is probably committed and the preliminary investigation is necessary to determine if a *prima facie* case exists or if there is justifiable reason for the action or inaction of the official or employee.

1.2 Aside from the Administrator, the Regional Managers, the Department Managers of the Internal Audit Services (IAS), and the Department for Legal Affairs (DLA) with respect to cases involving IAS officers and employees, and Provincial Managers with respect to cases involving their employees, may order the conduct of preliminary investigation.

1.3 The preliminary investigation shall be conducted by the designated investigator in the following manner;

a) He shall require the complainant to affirm his signature and to swear to the complaint if still unsworn to. Further, he shall require the complainant to submit the affidavits of his witnesses and other documents and real evidence supporting his complaint. Whenever necessary, he shall take the sworn statements of the complainants and his witnesses;

b) He shall inform the official or employee of the complaint against him and require him to submit his counter-affidavit as well as those of his witnesses and other documents and real evidence supporting his defense. Whenever necessary, he