

[BOI MEMORANDUM ORDER NO. 04-92, July 06, 1992]

RULES OF PROCEDURE TO GOVERN DEPORTATION PROCEEDINGS

Pursuant to Section 3, in relation to Section 37(c), of Commonwealth Act No. 613, as amended, otherwise known as "The Philippine Immigration Act of 1940", the following rules of procedure are hereby promulgated to govern the proceedings in deportation cases:

**Rule I
General Provisions**

SECTION 1. Scope - These rules shall apply to all proceedings before the Board of Commissioners, the Boards of Special Inquiries and the various offices and divisions involved in the handling of deportation cases.

SECTION 2. Nature of Deportation Proceedings - Deportation proceedings are not criminal, but administrative, in character. Subject to the requirements of due process, the deportation hearing shall be conducted for the purpose of ascertaining the truth without necessarily adhering to technical rules applicable to judicial proceedings.

SECTION 3. Jurisdiction - Deportation can be initiated under of two laws: (a) Section 8, Chapter 3, Title I, Book III of the 1987 Administrative Code [E.O. No. 292]; or (b) Section 37(a) of the Philippine Immigration Act of 1940.

The Board of Commissioners shall have exclusive jurisdiction to hear and decide deportation cases filed under Section 37(a) of the Philippine Immigration Act of 1940.

Cases initiated under the Administrative Code shall be decided by the Office of the President based on the report and recommendation submitted by the Board of Commissioners.

The Board of Commissioners shall be composed of the Commissioner of Immigration, as Chairman, and the two Associate Commissioners, as Members.

**Rule II
Commencement of Deportation Proceedings**

SECTION 1. Complaints - A deportation case may be initiated by complaint of a government agency or a private citizen specifying the acts or omissions complained of which must be stated in plain and concise language to enable the

alien to know on what ground he is intended to be deported and the Board of Commissioners to pronounce a proper judgment.

All complaints shall be filed with the Office of the Commissioner.

SECTION 2. Form of Complaints - Generally, complaints shall be under oath, otherwise they will not be entertained. In the latter, case, the complainants may be advised to put their complaints under oath.

Complaints filed by government agencies in the regular discharge of their functions, as distinguished from mere referrals, need not be under oath. Referrals, however, shall be the subject of verification or case build-up by the Intelligence Division.

SECTION 3. Sufficiency of Complaints - A complaint for deportation is sufficient if it states the name of the alien, the acts or omissions, complained of, the name of the complainant, the approximate time of the commission of the offense, and the place wherein the offense was committed.

Complaints containing charges which are hearsay or mere generalities, or which are vague, and those filed solely for the purpose of facilitating the collection of money, including claims for support, shall not be entertained.

SECTION 4. Anonymous Complaints - Anonymous complaints including those where the address of the complainant is unknown and cannot be determined shall not be entertained. However, where the charge is serious and can be easily verified, the same shall be referred to the Intelligence Division for verification and/or case build-up by the Commissioner.

SECTION 5. Action On Complaints - All complaints received by the Office of the Commissioner shall be referred to the Chief of the Legal Division for determination of their sufficiency. All complaints found to be sufficient in form and substance shall be raffled for assignment to the Special Prosecutors by the Chief of the Legal Division before the end of the day when such complaints were received. All complaints which are found to be deficient, including anonymous complaints, shall be recommended by the Chief of the Legal Division to the Commissioner either for outright dismissal or for referral to the Intelligence Division for verification or case build-up. The Chief of the Legal Division may advise a private party to put his complaint under oath when it is otherwise sufficient in substance.

SECTION 6. Withdrawal of Complaint - The withdrawal of the complaint does not necessarily discharge the alien from deportation. When there is obvious truth or merit to the complaint, the same shall be given due course in accordance with these Rules notwithstanding the withdrawal of the complaint and/or desistance of the complainant.

Rule III Preliminary Investigation

SECTION 1. Notice to show cause - Upon receipt of a complaint, the Special Prosecutor to whom the case was assigned shall immediately issue a notice directing the alien to appear before him on the date and time specified therein which shall not be more than ten (10) days from the date of the notice, to answer the charges and

show cause why he should not be deported. A copy of the complaint shall be attached to the notice. The complainant shall also be notified of the scheduled hearing.

SECTION 2. Determination of prima facie case - Within ten (10) days from the date of the hearing, the Special Prosecutor shall determine whether a *prima facie* case exists against the alien based on the submissions of the alien, the complaint and other evidence on record. If he finds a *prima facie* case, he shall immediately prepare a charge sheet which must be filed with the Board of Special Inquiry before the end of the aforesaid ten-day period.

SECTION 3. Failure to Appear - If the alien fails to appear at the hearing despite notice duly served at the address given in the complaint or appearing in the Bureau's records, or if he refuses to accept the notice, the Special Prosecutor shall determine whether on the basis of the complaint and evidence before him, a *prima facie* case exists against the alien and, if so, he shall file the corresponding charge sheet with the Board of Special Inquiry and recommend to the Commissioner the issuance of a mission order to secure the appearance of the alien before the Board of Special Inquiry.

If a *prima facie* case cannot be established from the available records, the Special Prosecutor may recommend to the Commissioner the referral of the case to the Intelligence Division for verification or case build-up.

SECTION 4. Complaint Based on Conviction - A complaint based on a final judgment of conviction for a crime shall be summarily disposed of, without need of preliminary investigation. The Special Prosecutor shall determine whether the crime committed involves moral turpitude or a violation of the law governing prohibited drugs, the Philippine Alien Registration Act of 1941, or the Revised Naturalization Laws of the Philippines and related laws. If it does, he shall forthwith institute deportation charges against the alien; otherwise, he shall recommend to the Commissioner the dismissal of the complaint and/or the alien's immediate release.

Rule IV Custodial Investigation

SECTION 1. When conducted - In all cases of arrests made pursuant to a mission order issued after determination of probable cause by the Commissioner of Immigration in accordance with Rule VI hereof, the arresting officer shall bring the arrested alien to the Special Prosecutor for custodial investigation. If the arrest is made after office hours and there is no Special Prosecutor who will conduct the custodial interrogation, the arrested alien shall remain under the custody of the Intelligence Division until the custodial interrogation is made at the next working day.

SECTION 2. Filing of Charge Sheet - Immediately after the custodial investigation, the Special Prosecutor shall determine whether a *prima facie* case exists against the alien. If there is a *prima facie* case, he shall file the corresponding charge sheet with the Board of Special Inquiry. If there is none, he shall recommend to the Commissioner the alien's immediate release. The Special Prosecutor must act on the case within two (2) days from the date of the custodial investigation.

Rule V

The Charge Sheet

SECTION 1. Charge Sheet: Accusation in Writing - A charge sheet is an accusation in writing charging an alien with an offense prepared and subscribed by the Special Prosecutor and filed with the Board of Special Inquiry.

SECTION 2. Form of Charge Sheet - The charge sheet shall be written in clear, simple and concise language and in a systematic manner as to apprise the alien respondent of the nature of the charge against him and to enable him to prepare for his defense.

SECTION 3. Sufficiency of the Charge Sheet - The charge sheet is sufficient if it states the name of the alien complained of, the designation of the offense, the acts or omissions constituting the offense, the approximate time of the commission of the offense, and the place where the offense was committed.

Where an offense was committed by more than one person, all of them shall be included in the charge sheet. If the name cannot be determined, he must be described under a fictitious name with the statement that his true name is unknown.

Rule VI

Mission Order and Search Warrant

SECTION 1. Warrantless Arrest - The Commissioner may issue a mission order which authorizes the warrantless arrest of the suspected alien pursuant to the 1985 Rules on Criminal Procedure, Rule 113, Sections 5, 8, 11 and 13. The mission order shall be valid for ten (10) days from date of issue.

SECTION 2. When Mission Order May Issue - A mission order Against a particular alien may be issued upon request of the Special Prosecutor upon failure of the alien to appear after notice or his refusal to accept the notice, and there is reasonable ground to believe that the alien may be guilty of the offense charged. The Chief of the Intelligence Division may likewise request for the issuance of a mission order if, based on surveillance reports, he believes that an alien may be guilty of an offense. A mission order shall be enforced by the members of the Intelligence Division.

SECTION 3. Search Warrant - Whenever necessary, and upon the recommendation of the Special Prosecutor or the Chief of the Intelligence Division, the Commissioner may secure a search warrant from the court under Rule 126 of the same Rules on Criminal Procedure. The search shall be conducted pursuant to Section 6, 7, 10 and 11 thereof. A warrantless search may be made if it is incidental to a lawful arrest.

SECTION 4. Duties of the Arresting Officer - The arresting officer shall carry out the mission order without delay and with due regard to the human rights of the alien to be arrested.

The arresting officer shall advise the alien of (1) the reason for the arrest; (2) the alien's right to counsel; (3) the alien's right to remain silent.

The arresting officer shall bring the alien to the Intelligence Division for record and fingerprint check, which shall include a telephone call to the alien's consulate or

embassy. The arresting officer shall inform the consul of the alien's arrest and request the consulate to make a records check of the alien.

On the day of the arrest, the arresting officer shall execute an affidavit of arrest and prepare a post operation report. He shall make a file consisting of the affidavit of arrest, post operation report, and the evidence seized, if any, and all other pertinent documents. He shall submit to the Office of the Commissioner a copy of the post operation report.

The arresting officer shall bring the alien to the Special Prosecutor for custodial investigation, provided that where the cause for the arrest was the alien's failure to appear or refusal to accept the show-cause notice as provided for in Rule III, Section 3 hereof, the alien shall not be turned over for custodial investigation but shall be detained for purposes of the hearing before the Board of Special Inquiry.

RULE VII

Bail

SECTION 1. Bail Not a Matter of Right - Aliens, in deportation proceedings, have no inherent right to bail. The release on bail of arrested aliens shall be discretionary with the Commissioner of Immigration who shall have the power to exact cash bonds in such amounts and under such conditions as he may prescribe to insure the appearance of aliens released from custody during the course of the deportation proceedings. No bail shall be allowed if there is already a deportation order by the Board of Commissioners, or when the evidence of guilt is strong and the probability of the alien jumping bail is high.

SECTION 2. Application for Bail - After the filing of a charge sheet, an application for release on bail may be filed by the alien personally with the Special Prosecutor assigned to the case. The Special Prosecutor shall evaluate the application in accordance with the immediately preceding section and submit his recommendation to the Commissioner of Immigration who shall either approve or deny the application.

SECTION 3. Conditions of Bail - All kinds of bail are subject to the following conditions:

- a. the undertaking shall be in force at all stages of the proceedings until its final determination;
- b. the alien shall appear before the Board of Commissioners whenever so required;
- c. the failure of the alien to appear at any hearing without justification shall be deemed an express waiver of his right to be present and the hearing shall proceed in absentia;
- d. the alien shall surrender himself for execution of the final order of deportation;
- e. the bond shall answer for all expenses incident to the arrest and apprehension of the alien should the latter fail to appear before the immigration authorities, and for all other expenses incurred in connection with the deportation, exclusion and departure of the alien.