



HEADQUARTERS PHILIPPINE COAST GUARD
(Punonghimpilan Tanod Baybayin ng Pilipinas)
139 25th Street, Port Area
Manila, 1018

CGLS

27 March 2015

STANDING OPERATING PROCEDURE
NUMBER.....03-15

**UNIFORM RULES OF PROCEDURE BEFORE
THE PCG DISCIPLINARY BOARD**

Pursuant to Republic Act No. 9993 otherwise known as PCG Law of 2009 and its Implementing Rules and Regulations, and HPCG Circular Number 11-14, The Revised Code of Conduct and Discipline for PCG Uniformed Personnel, the following Rules of Procedure are hereby prescribed and promulgated.

RULE I

PRELIMINARY PROVISIONS

Section 1. Title. These Rules shall be known and cited as the Uniform Rules of Procedure of the PCG Disciplinary Board.

Section 2. Scope and Coverage. These Rules shall apply to all administrative cases filed against PCG Uniformed Personnel before the PCG Disciplinary Board and shall cover service or non-service related offenses.

Section 3. Construction. These Rules shall be liberally construed in order to attain just, expeditious and inexpensive disposition of administrative cases against PCG Uniformed Personnel.

Section 4. Nature of Proceedings. The investigation and hearing before the PCG Disciplinary Board shall be summary in nature and shall be conducted without strict recourse to the technical rules of procedure and evidence available in judicial proceedings. The provisions of the Revised Rules on Administrative Procedures in the Civil Service as well as the 1997 Rules of Court shall be applied suppletorily.

Section 5. Cause of Action. A cause of action in administrative disciplinary proceeding is an act or omission which violates the Revised Code of Conduct for PCG Uniformed Personnel

Section 6. Doctrine of Res Judicata. It is a rule that a final judgment on the merits by the PCG Disciplinary Board is conclusive between the parties to a case as to all matters that were litigated or that could have been litigated in that case.

The elements of res judicata are as follows:

- a. The former judgment or order must be final;
- b. The judgment or order must be on merits;
- c. It must have been rendered by a court or the board having jurisdiction over the subject matter and the parties; and
- d. There must be between the first and the second action, identity of parties, of subject matter and cause of action.

Section 7. Doctrine of Litis Pendentia. It refers to a situation where in another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious.

The requisites of litispendentia are as follows:

- a. The identity of the parties, or at least such as representing the same interests in both actions;
- b. The identity of rights asserted and relief prayed for, the relief being founded on the same facts; and
- c. The identity of the two cases such that judgment in one, regardless of which party is successful, would amount to res judicata in the other.

Section 8. Right Against Self-Incrimination. It is the constitutional right of the respondent to refuse to answer questions or otherwise give testimony against himself or herself which will subject him or her to an incrimination.

RULE II

GENERAL PROVISIONS

Section 1. Definition of Terms. For the purpose of this Rules of Procedure, the following words and phrases shall be defined as follows:

- A. Administrative Disciplinary Proceeding – it is a method and process before the PCG Disciplinary Board that are non-litigious in nature and subject to the minimum requirements of administrative due process. The technicalities of law, procedure and evidence shall be liberally applied thereto.

- B. Administrative Due Process – is recognized to include :
- a) the right to notice, be it actual or constructive of the institution of the proceedings that may affect a person's legal right;
 - b) a real opportunity to be heard personally or with assistance of counsel, to present witnesses and evidence in one's favour and to defend one's rights;
 - c) a tribunal or board vested with competent jurisdiction, so constituted as to give him reasonable assurance of honesty and impartiality; and
 - d) a finding or decision by that tribunal supported by substantial evidence presented at the hearing or at least ascertained in the records, or disclosed or made known to the parties affected.
- C. Board – pertains to the PCG Disciplinary Board
- D. Complaint – a sworn written statement of disciplinary infractions allegedly committed by respondent PCG Uniformed Personnel, subscribed and verified by the offended party or by the Commander of CGIAS.
- E. Decision – the written disposition of the Disciplinary Authority, Disciplinary Board or appellate body stating clearly the facts and the law upon which it is based.
- F. Disciplinary Authority – refers to a PCG Officer vested with authority to impose sanctions for violating the same and provide corrective measures to offenders.
- G. Finality of Decision – there is finality of decision when upon the lapse of fifteen (15) days from receipt, or notice of such decision, no motion for reconsideration or appeal has been filed in accordance with these Rules.
- H. Forum Shopping – is an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for certiorari.
- I. Judgment on the Pleadings – judgment of resolution of the Board based on the Respondent's answer or affidavit which fails to tender an issue or otherwise admits the material allegations in the complaint or report.
- J. Jurisdiction – the authority of the PCG Disciplinary Board to hear and decide a case.
- K. Newly Discovered Evidence – that evidence which could not have been discovered and produced during the hearing of the case despite due diligence, and if presented, would probably alter the decision.

- L. PCG Disciplinary Board – refers to the body composed of PCG Uniformed Personnel designated to resolve administrative disciplinary actions filed against PCG Uniformed Personnel involving any offense enumerated in the Revised Code of Conduct and Discipline for PCG Uniformed Personnel.
- M. PCG Uniformed Personnel – refers to all PCG Officers and PCG Non-Officers.
- N. Reglementary Period – the period required by law or these Rules to perform a specific act. In the computation of a period of time, the first day shall be excluded and the last day shall be included unless it falls on a Saturday, Sunday, or legal holiday, in which case the last day shall fall on the next working day.
- O. Respondent – refers to a PCG Uniformed Personnel under investigation or with pending case before the Board.
- P. Subpoena Ad Testificandum – a process directed to a person requiring him to appear and testify in an investigation or hearing.
- Q. Subpoena Duces Tecum – a process directing a person to appear and bring with him books, documents or things under his control in an investigation or hearing.
- R. Substantial Evidence – that amount of evidence which a reasonable mind might accept as adequate to justify a conclusion.
- S. Summary Judgment – judgment or resolution of the Board based on affidavits, depositions or admissions of the respondent, private offended party or witnesses.
- T. Summary Proceeding – a proceeding whereby judgment or decisions of the Board are derived based on affidavits and position papers submitted to the Board without the conduct of a trial – type proceeding to achieve an expeditious and inexpensive determination of administrative disciplinary cases.
- U. Summons – is a written notice informing the respondent that he is charged with an offense and directing him to file his answer.

Section 2.Three (3) Phases of the Proceedings. The following are the three (3) phases of the proceedings for the PCG Disciplinary Board to observe upon receipt of the directives from the Commandant, PCG;

- a. Meet and Convene to evaluate the Complaint or Investigation Report;
- b. Disposition of the case without need of trial;

- c. Discretion to conduct a summary hearing upon approval of the Motion or Letter Request of the respondent to appear for trial before the Board.

Section 3. Rules of Procedure. The Rules of Procedure for the three (3) phases of the proceedings is herein attached as Appendix 1.

Section 4. Terms in the Rules of Procedure. The terms in the Rules of Procedure for the three (3) phases of the proceedings is herein attached as Appendix 2.

Section 5. Flow Chart. The flow chart in the Rules of Procedure for the three (3) phases of the proceedings is herein attached as Appendix 3.

Section 6. Right to be represented by counsel. At any time of the proceedings, the respondent may be assisted by a private counsel of his own choice such that during clarificatory questioning by the Board, the respondent may confer with his private counsel before answering. If the respondent at the start of the proceedings appear without counsel, he/she shall be informed of the right to avail of one if he/she so desire. However, the hearings shall proceed as scheduled even in the absence of counsel.

Section 7. Prohibitions of the PCG Legal Officers to represent the erring PCG Uniformed Personnel. – The Legal Officers of the PCG are prohibited from representing the erring PCG Uniformed Personnel before the Board.

Section 8. Effect of Failure to Prosecute by the Private Complainant. The failure to prosecute the case during the hearing, despite of two (2) notices, shall be sufficient ground to drop the complaint where the culpability of the respondent could not be established or proven without the testimony of the complaining witnesses. However, before dropping the complaint, the Board shall exert best effort to locate the complainant and his/her witnesses and to inquire into the reasons for their failure to prosecute the case.

In cases where the culpability of the respondent can be established by evidence other than the testimony of the complainant, non-appearance of the latter shall not be a ground to terminate the proceedings. The Board shall endeavor to continue with the hearing and secure the attendance of other vital witnesses, upon proper motion by the Board.

Section 9. Admission by Respondent. When the Respondent admits in his answer that he is guilty of the complaint charged, the Board shall still continue the proceeding to determine the degree of respondent liability and the appropriate penalty to be imposed.

Section 10. Confrontation or examination of witness. The respondent during confrontation or examination of witness shall direct all his questions to the Board. The Board upon determination of the relevance and materiality of the respondent's question shall then propound the same to the witnesses.

Section 11. *All questions and answers by the parties shall be directed to the Board.* All questions and answers by the parties summoned before the Board during the summary hearing shall be directed to the Board for determination of its materiality and relevance.

Section 12. *Duty of the Board upon receipt of the position paper or the lapse of the given period to submit.* Within fifteen (15) days from receipt of the position paper or the lapse of the given period to submit the same, the Board shall render its resolution and recommendation based on the pleadings or evidence gathered for submission to the Commandant, PCG.

Section 13. *Effect of Optional or Compulsory Retirement.* The optional or compulsory retirement of the respondent shall not affect the pendency of his/her administrative case and the award of retirement benefits due him except his/her accrued leave benefits shall be subject to its final disposition.

Section 14. *Effect of Death.* Death of the respondent during the pendency of the case shall terminate the administrative proceedings and has the effect of exoneration. Upon presentation of the certified true copy of the death certificate of the deceased, the Board will issue a resolution terminating the case.

Section 15. *Period to Render Decision.* The Board shall issue its resolution and recommendation within fifteen (15) days from receipt of the answer and/or position paper or the expiration of the period for submitting the same which contain a brief statement of the facts, rule or regulation violated or offense committed, a discussion on the findings of the Board, evidence and basis for the recommendation.

RULE III

MOTION FOR RECONSIDERATION

Section 1. *Motion for Reconsideration.* The party adversely affected may file a motion for reconsideration within fifteen (15) days from the receipt of the resolution of the Disciplining Authority on the grounds of:

- a. New evidence has been discovered which materially affects the decision rendered; or
- b. The decision is not supported by the evidence on record; or
- c. The resolution and/or recommendation of the disciplining authority are contrary to law.

The filing of Motion for Reconsideration shall stay the execution of the disciplinary action sought to be reconsidered. Only one (1) Motion for Reconsideration shall be allowed and the same shall be considered and decided by the Disciplining Authority within fifteen (15) days from receipt thereof.

Section 2. Referral of the case back to the PCG Disciplinary Board. In the case where the party adversely affected timely filed a motion for reconsideration to the Commandant, PCG, the Commandant will refer back the case to the PCG Disciplinary Board for the determination and resolution of its motion for reconsideration.

RULE IV

APPEAL

Section 1. How appeal is taken; time of filing. The resolution of the Disciplining Authority may be appealed to the Secretary of the DOTC within fifteen (15) days from receipt thereof by either the respondent or offended party, as the case may be. Provided that, if the resolution is for the dismissal of the case, the offended party may only appeal the same based on grounds and/or evidence not considered by the Disciplining Authority.

Any appeal made beyond the prescriptive period stated herein shall not be entertained.

Section 2. Notice of appeal. The notice of appeal shall be filed with the Secretary of the DOTC which shall specifically state the date of the resolution appealed from and the date of receipt thereof. Failure to do so may cause the dismissal of the appeal. Upon compliance of the requirements for notice of appeal, the Secretariat will forward the original records of the case to the appellate body.

Section 3. Effect of failure to appeal. In the absence of an appeal, the Commandant, PCG approved resolution dismissing a PCG Non-Officer shall be considered final and executory.

In the case of PCG Officers with the rank of Ensign to Captain, upon lapse of the prescriptive period to appeal, the Commandant, PCG approved resolution shall be immediately forwarded to the Office of the Secretary of the Department of Transportation and Communications for confirmation.

In the case of Flag Rank Officers, upon lapse of the prescriptive period to appeal, the Commandant, PCG approved resolution shall be immediately forwarded to the Office of the President for confirmation upon endorsement of the Secretary of the Department of Transportation and Communications.

Section 4. Certificate of Finality. The Commandant shall issue a certificate of finality of decision, resolution finally disposing of the case when no motion for reconsideration or appeal is filed within the prescribed period.

RULE V

NOTICES AND SUMMONS

Section 1. *To whom summons must be served.* The summons shall be directed to the respondent, signed by the secretariat of the Board, together with the Complaint under seal and contain:

- a) the name of the Board and the name of the parties to the action;
- b) a direction that the respondent answer together with his documentary evidence within the time fixed by these Rules;
- c) a notice that unless the respondent so answers, the Board will decide the case based on evidence presented; and
- d) the respondent has the option to file a motion or letter request to conduct a summary hearing and the Board has discretion to grant or deny such request.

Section 2. *By whom served; where served.* The notices and summons may be served by the process server of the Board or for justifiable reasons by any suitable person authorized by the Board issuing the notices and summons.

The notices and summons to the respondent shall be personally served to him at his residence or CG assignment. If the respondent cannot be located at his residence or CG assignment, the notices and summons shall be served to his last known address as appearing in his records with the CG – 1 or CGAO.

RULE VI

FILING AND SERVICE OF PLEADINGS, JUDGMENTS AND OTHER PAPERS

Section 1. *Filing and service, defined.* Filing is the act of presenting the pleading or other paper to the Board and in the case of Motion for Reconsideration to the Commandant, PCG.

Service is the act of providing a party with a copy of the pleading or paper concerned. If any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the Board or Disciplinary Authority. Where one counsel appears for several parties, he/she shall only be entitled to one copy of any paper served upon him/her by the opposite side.

Section 2. *Manner of filing.* The filing of pleadings and other papers shall be made by presenting the original copies thereof to the concerned Disciplinary

Authority, the Board or Appellate Body, or by sending them by registered mail with proof that the other party was served with a copy.

Section 3. Modes of service. Service of pleadings, motions, notices, orders, judgments and other papers shall be made either personally or by mail.

Section 4. Complaint. – A complaint shall be in writing, subscribed, verified and sworn to by the complainant and shall contain the following:

- a. Full name and address of the complainant;
- b. Full name and address of the PCG Uniformed Personnel complained of and present CG assignment;
- c. A brief narration of the acts or omissions of PCG Uniformed Personnel which constitutes disciplinary infractions;
- d. Documentary evidence and affidavits of witnesses, if any; and
- e. Certification of Non – Forum Shopping.

Section 5. Certification against forum shopping. – The complainant shall certify under oath the following facts in the complaint or other initiatory pleading asserting a claim for relief or in a sworn certification annexed thereto and simultaneously filed therewith:

- a. that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein;
- b. if there is such other pending action or claim, a complete statement of the present status thereof; and
- c. if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report the fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Section 6. Effect of Forum Shopping. – Failure to comply with the foregoing above requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing.

Section 7. Answer. The Respondent's Answer shall be submitted to the Board within fifteen (15) days from receipt of summon. The Answer shall be in writing, under oath, it must be specific, and shall contain a material facts and applicable laws, if any, including documentary evidence, sworn statements covering testimonies of witnesses, if there be any, in support of one's case.

The Answer shall be filed in three (3) copies either personally or by registered mail, with proof of service to the complainant. If the Answer is sent by registered mail, it is deemed filed on the date and hour of receipt stamped by the post office on the envelope. Said envelope shall be kept and made an integral part of the Answer and records of the case.

The Board shall not entertain requests for clarification, bills of particulars, motion to dismiss or motions to quash. If any of these pleadings are interposed by the respondent, the same shall not interrupt the running of the reglementary period for filing an answer.

Section 8. *Submission of a position paper.* In the event of a summary hearing, the Board shall require the Respondent to submit his position paper within fifteen (15) days from the termination thereof. The respondent shall specify in his position paper all his available defenses and grounds for exoneration.

Section 9. *Refusal or failure to submit position paper.* The refusal or failure of the respondent to submit his position paper when directed to shall constitute a waiver on his part to present any additional evidence and shall give the Board the authority to render its resolution and recommendation based on the pleadings or evidence gathered.

RULE VII

SECRETARIAT

Section 1. *Head Secretariat.* There shall be one (1) Head Secretariat of Disciplinary Board who shall supervise the Secretariat in every Disciplinary Boards. The Head Secretariat shall also prepare and submit to the Chairperson a monthly status report of the cases and activities of the Board.

Section 2. *Secretariat.* There shall be two (2) Secretariats for each Disciplinary Boards to ensure the efficient and effective management of case records and unity of rules and regulations of all the said Disciplinary Boards. The members of the Secretariat shall be selected from the PCG Uniformed Personnel as may be recommended by the CG-1 and approved by the Commandant, PCG. The Secretariat shall have the power to issue notices, summons and/or subpoena as directed by any of the Chairperson of the PCG Disciplinary Boards.

Section 3. *Keeping of Records.* The Secretariat shall keep a record of the entire proceedings and a copy of the pertinent documents thereto. The original records of the proceedings shall then be forwarded to the Commandant, PCG.

Section 4. *Raffling of Cases.* In the case where the respondent is a non-officer, the Secretariat shall raffle the case to assign or distribute the case equally to the 3 PCG Disciplinary Boards for PCG non-officers. The raffle of cases should be regularly conducted at the hour and on the day to be fixed by the 3 chairman of the 3 PCG Disciplinary Boards for PCG non-officers.

Section 5. *Multiple Respondents.* In the case where there are multiple respondents to be heard on the same cause of action, the case shall be distributed and assigned to the PCG Disciplinary Board who has jurisdiction over the most senior officer or the most senior non-officer.

RULE VIII

LIMITATIONS UPON PROSECUTIONS

Section 1. *Prescription of Offense.* No PCG Uniformed Personnel shall be tried or punished by the Disciplinary Authority or PCG Disciplinary Board for any offense committed more than two (2) years from the date of the discovery of the offense.

Provided that the absence of the respondent from the jurisdiction of the Philippines shall interrupt the running of the period prescribed herein.

Provided further, that from the time the Complaint or Investigation Report had been filed to the CGIAS shall also interrupt the running of the period prescribed herein.

RULE IX

OTHER LEGAL ACTIONS

The command may further employ or pursue such other civil and criminal actions as provided for under existing laws.

RULE X

REPEALING CLAUSE

All rules and/or regulations or portion thereof inconsistent with the provisions of this Rules of Procedure, are hereby repealed or modified accordingly.

RULE XI

TRANSITORY PROVISIONS

The provisions of this Rules of Procedure shall have retroactive effect. Provided that, the application of this Rules of Procedure shall not prejudice or deny a right previously available to the Respondent.

RULE XII

SEPARABILITY CLAUSE

If, for any reason, a provision or part hereof shall be declared illegal, the validity of the other provisions shall not be affected by such declaration.

RULE XIII

EFFECTIVITY

This Rules of Procedure shall take effect fifteen (15) days after its publication by the Coast Guard Adjutant.

BY COMMAND OF ADMIRAL ISORENA, PCG:

OFFICIAL:

OSCAR C ENDONA JR
CAPT PCG(GSC)
Chief of Coast Guard Staff


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