

REVISED RULES ON ADMINISTRATIVE CASES IN THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION

TITLE I

GENERAL PROVISIONS

ARTICLE 1. Title. – These rules shall be known as the “*Revised Rules on Administrative Cases in the Philippine Amusement and Gaming Corporation*”.

ARTICLE 2. Declaration of basic policy. – The Philippine Amusement and Gaming Corporation (PAGCOR) is a government-owned-and-controlled corporation that is committed towards nation-building while maintaining honesty and integrity in the public service. Corporate governance shall be carried out in a transparent, responsible and accountable manner and with the utmost degree of professionalism and effectiveness. It shall promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the public service.

ARTICLE 3. Coverage. - - All rights granted to, as well as correlative obligations demanded from, employees of PAGCOR under these Rules shall, except as may otherwise be provided herein, apply alike to all its directors, officers and employees, whether probationary, regular, contractual, casual, confidential or co-terminus, including consultants.

ARTICLE 4. Construction. – These Rules shall be liberally construed to carry out the objectives of Presidential Decree No. 1869, as amended by Republic Act No. 9487, in relation to the Constitution, Republic Act No. 10149, Republic Act No. 6713, Executive Order No. 292, and the Civil Service Law, as amended, and to assist the parties in obtaining timely, reasonable, consistent and fair resolution of an administrative case/matter.

ARTICLE 5. Suppletory Application of existing rules. - The following shall, insofar as they are not inconsistent with these rules, apply suppletorily to these rules:

- 1) The Code of Conduct of PAGCOR;
- 2) Book I of the 2010 Code of Discipline of PAGCOR;
- 3) The Manual of Procedures of each Department / Unit of PAGCOR;
- 4) The User's Guide for Behavioral Offenses, which serves as an appendix to Book II of the 2010 Code of Discipline of PAGCOR;
- 5) The rules on alternative dispute resolution; and
- 6) Company personnel policies.

ARTICLE 6. Date of effectivity. – These rules shall take effect immediately upon approval by a majority vote of the members Board of Directors of the Philippine Amusement and Gaming Corporation (PAGCOR) actually present in a meeting called for this purpose.

ARTICLE 7. Coverage and Definition of Terms. - These Rules shall be applicable to all cases brought before the Philippine Amusement and Gaming Corporation (PAGCOR).

The terms hereunder shall be construed as follows:

- a. **AGENCY** refers to the Philippine Amusement and Gaming Corporation (PAGCOR).
- b. **AUTHORIZED REPRESENTATIVE OF THE DISCIPLINING AUTHORITY** refers to any of the following:
 - (1) the General manager (GM) of the Casino Filipino branch;
 - (2) the head of a Department or Unit of the agency;
 - (3) the head of the Security Department or the Chief Security Officer of the branch;
 - (4) the head of the Human Resource and Development Department; or
 - (5) the head of the Corporate Investigation Unit (CIU).
- c. **COMMISSION** refers to the Civil Service Commission (Central Office and Regional Offices).
- d. **COMMISSION PROPER** refers to the Civil Service Commission-Central Office.
- e. **CORPORATE OFFICE** refers to the PAGCOR House, the Hyatt Corporate Office, the PAGCOR Imus Complex and offices at Paranaque.
- f. **DISCIPLINING AUTHORITY** refers to the Board of Directors or the Chairman and Chief Executive Officer of the agency, who shall act as the person or body duly authorized to impose the penalty provided for by these rules.
- g. **FORMALLY CHARGED** - a person shall be considered formally charged:
 - (a) upon the filing of a complaint at the instance of the disciplining authority or head of the agency; or
 - (b) upon the finding of the existence of a *prima facie* case by the disciplining authority or head of the agency, in case of a complaint filed by a private person.
- h. **FORUM-SHOPPING** refers to the filing of several administrative actions or complaint either simultaneously or successively before another agency or any tribunal having jurisdiction over the case against the same party involving the same essential facts, circumstances, acts, causes of action or relief, and all raising substantially the same issues either pending in, or already resolved adversely by, some other tribunal or agency.
- i. **HEAD OF AGENCY** refers to the Chairman and Chief Executive Officer (CEO) of PAGCOR, or in the former's absence, the President and Chief Operating Officer of PAGCOR.
- j. **OFFICER** refers to any employee (PC 9 and above) in good standing, including a consultant or a director of the PAGCOR.
- k. **PARTY ADVERSELY AFFECTED** refers to the respondent against whom a decision in a disciplinary case has been rendered or to the disciplining authority in an appeal from a decision reversing or modifying the original decision.
- l. **PERSON COMPLAINED OF** refers to the person who is the subject of a complaint but who is not as yet issued a notice of charge/s or formal charge by the disciplining authority.

m. PERSONNEL ACTION refers to any action denoting the movement or progress of personnel which shall include appointment, promotion, transfer, reinstatement, reemployment, detail, reassignment, secondment, demotion and separation from the service.

n. QUESTIONABLE ACCOUNTING MATTER refers to serious violation of generally accepted accounting principles and standards applicable to the Agency which shall include, but are not limited to:

- fraudulent or deliberate error in the preparation of the financial statements of the Agency;
- fraudulent or deliberate error in the maintenance of the financial records of the Agency;
- misrepresentation or deliberate false statement by any officer or employee regarding a significant matter contained in the financial records, financial reports or external or internal audit reports of the Agency.

o. QUESTIONABLE AUDITING MATTER refers to any serious violation or override of the Agency's internal controls.

p. RESPONDENT refers to the person who is formally charged.

q. WHISTLEBLOWING refers to the disclosure or filing of a complaint by an employee or a group of employees of the Agency who, in good faith, believes that any of his/their colleagues is or has engaged in an improper course of illegal or unethical conduct or conduct that violates the CG Rules, or constitutes a Questionable Accounting or Auditing Matter or an offense covered by the Agency's Code of Discipline. Such employee or group of employees must be able to disclose such conduct free from fear of intimidation or reprisal.

ARTICLE 8. *Technical Rules in Administrative Investigations.* - Administrative investigations shall be conducted without necessarily adhering strictly to the technical rules of procedure and evidence applicable to judicial proceedings.

ARTICLE 9. *Acts of Head of the Agency.* - The Head of the Agency shall have the power to impose the penalty provided for in these rules and to act in all instances on behalf of the Board of Directors, except to amend the Corporate Governance Rules, or other instances that require the majority vote or approval of the members of the Board of Directors. In the performance of his duties, the Head of the Agency shall exercise extraordinary diligence in the conduct of its affairs.

Extraordinary diligence refers to utmost diligence of a very cautious person with due regard for all the circumstances.

TITLE II

**RULES GOVERNING CASES COGNIZABLE BY
THE HEARING OFFICER**

PART I

**JURISDICTION AND POWERS OF
THE CORPORATE INVESTIGATION UNIT (CIU)**

ARTICLE 10.

A. Primary and exclusive jurisdiction of the Corporate Investigation Unit. - The following cases shall be cognizable in the first instance by the Corporate Investigation Unit :

1. A complaint involving any officer of PAGCOR, whether acting in his individual capacity or in concert with a co-employee or with a private individual;
2. A case wherein an officer and a rank-and-file employee participated or cooperated, whether directly or indirectly, or benefited from the commission of the offense;
3. A case endorsed by either the Chairman and Chief Executive Officer (CEO) or the President and Chief Operating Officer (COO) of PAGCOR;
4. A case referred by a Department Head of the agency, or by the Branch Management Panel (BMP) or the Corporate Hearing Panel (CHP); *Provided* that all following conditions concur, to wit:
 - a. Preliminary investigation on the alleged wrongdoing had been undertaken by the Security Division of the branch or by the Corporate Security Unit (CSU);
 - b. An officer of PAGCOR is allegedly involved in the commission of the act complained of; and
 - c. There is a substantial legal issue that requires the expertise of the Corporate Investigation Unit, or there are evidentiary matters that need to be threshed out further.

B. Powers, Functions and Duties. — The Corporate Investigation Unit shall have the following powers, functions and duties:

- (1) Investigate and prosecute on its own or upon the complaint by any person, any act or omission of any officer or employee of PAGCOR, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient.
- (2) Issue a formal charge/notice of charge/s upon the person complained of who was apprehended by security personnel while he is committing an offense, or has just committed an offense;
- (3) Summarily dismiss the case in the absence of a *prima facie* case;
- (3) Direct, upon complaint, any officer or employee of PAGCOR to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties;
- (4) Direct the officer concerned, in any appropriate case, and subject to such limitations as it may provide in PAGCOR's rules, to furnish it with copies of documents relating to contracts

or transactions entered into by his office involving the disbursement or use of public funds or properties;

- (5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents;
- (6) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in PAGCOR, and make recommendations for their elimination and the observance of high standards of ethics and efficiency;
- (7) Issue summons and require the production of documents, books, or records deemed necessary to the investigation or inquiry;
- (8) Investigate and initiate the proper action against any officer or employee who has allegedly committed any malfeasance, misfeasance or nonfeasance, such as but not limited to any act violative of Republic Act No. 10149, Republic Act No. 6713, Republic Act No. 3019, as amended, or the Civil Service Law.

ARTICLE 11. *Applicability.* — The provisions of these Rules shall apply to all kinds of irregularities, anomalies and violations of Agency regulations and internal controls that have been committed by an officer or employee.

ARTICLE 12. *Immunities.* — In all hearings, inquiries, and proceedings of the Corporate Investigation Unit, including preliminary investigations of offenses, no person summoned or subpoenaed to testify as a witness shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda and/or other records on the ground that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate him or subject him to prosecution: provided, that no person shall be prosecuted criminally for or on account of any matter concerning which he is compelled, after having claimed the privilege against self-incrimination, to testify and produce evidence, documentary or otherwise.

Under such terms and conditions as it may determine, the Board of Directors, may, upon the recommendation of the Corporate Investigation Unit, grant immunity from administrative liability to a whistleblower or any person whose testimony or whose possession and production of documents or other evidence may be necessary to determine the truth in any hearing, inquiry or proceeding. The immunity granted under this and the immediately preceding paragraph shall not exempt the witness from criminal prosecution for perjury or false testimony nor shall he be exempt from demotion, reassignment or transfer from office.

Refusal to appear or testify pursuant to the foregoing provisions shall be subject to removal of the immunity from administrative liability and punishment pursuant to these Corporate Governance Rules.

ARTICLE 13. *Administrative Complaints.* — The Corporate Investigation Unit shall act on all complaints relating, but not limited to acts or omissions which:

- (1) Are contrary to law or regulation;
- (2) Are unreasonable, unfair, oppressive or discriminatory;
- (3) Are inconsistent with the general course of an agency's functions, though in accordance with law;
- (4) Proceed from a mistake of law or an arbitrary ascertainment of facts;
- (5) Are in the exercise of discretionary powers but for an improper purpose; or
- (6) Are otherwise irregular, immoral or devoid of justification.

ARTICLE 14. *Exceptions.* — The Corporate Investigation Unit may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:

- (1) The complainant has an adequate remedy in another judicial or quasi-judicial body;
- (2) The case pertains to a matter outside the jurisdiction of the Corporate Investigation Unit;
- (3) The complaint is trivial, frivolous, vexatious or made in bad faith; or
- (4) The complainant has no sufficient personal interest in the subject matter of the complaint.

ARTICLE 15. *Exclusions.* - The following cases shall be excluded from the application of the rules hereunder:

a. Cases within the competence of the Human Resource and Development Department (HRDD), such as but not limited to the following:

- i. Unauthorized absence/s;
- ii. Habitual absenteeism
- iii. Habitual tardiness;
- iv. Excessive breaktime;
- v. Violation of rules on attendance and leave;
- vi. Attendance fraud;
- vii. Violation of rules on proper notification of absence.

The aforementioned cases shall actually, directly and exclusively be acted upon by the Human Resource & Development Department (HRDD).

b. Cases wherein the person complained of is a rank-and-file employee (i.e. PC 1 to PC 8).

c. Cases wherein the persons complained of who actively participated / cooperated / conspired / benefited in the commission of a malfeasance / misfeasance / nonfeasance are all rank-and-file employees.

ARTICLE 16. *Visitorial Power of the Corporate Investigation Unit.* - The Corporate Investigation Unit (CIU) shall have the inherent power to-

- (1) Enter and inspect the premises of any office, warehouse, casino, slot machine arcade, poker club, bingo venue, or any area which, directly or indirectly, conducts activities related to the operations and administration of PAGCOR;
- (2) Examine and have access to any book, record, file, document or paper relevant to the subject matter of the investigation;
- (3) Summon any employee for an investigation;
- (4) Direct the submission of an explanation, document, record or any paper which the CIU deems necessary for the ascertainment of the truth;
- (5) Order the physical examination of any employee, including but not limited to, subjecting the suspect to test for drug use, alcohol intake, or a communicable or infectious disease;
- (6) Coordinate with personnel of the Philippine National Police (PNP), the National Bureau of Investigation (NBI), the Department of Justice (DOJ), the Office of the Ombudsman, the Office of the Government Corporate Counsel (OGCC), the Office of the President, the Senate and House of Representatives, the Civil Service Commission (CSC), the Commission on Audit (COA), the Governance Commission for Government-Owned-or-Controlled Corporations (GCG) and other government agencies whenever necessary in its fact-finding investigation.

Failure to faithfully comply with an order, summons or *subpoena* issued by the Corporate Investigation Unit shall be penalized in accordance with the Corporate Governance Rules of PAGCOR.

PART II

RULES OF PROCEDURE IN CASES PROBED BY THE CORPORATE INVESTIGATION UNIT

ARTICLE 17. *Inquiry.* - An administrative inquiry by the Corporate Investigation Unit (CIU) is initiated by -

- a. endorsement by the Chairman and the Chief Executive Officer (CEO) or by the President and Chief Operating Officer (COO) of a case for investigation;
- b. the filing of a written complaint under oath by the any person whose right or interest had been prejudiced or adversely affected by an act or omission committed by an officer of PAGCOR, whether acting in his individual capacity or in concert with a co-employee or with a private individual;
- c. the endorsement of a case wherein an officer and a rank-and-file employee participated or cooperated, whether directly or indirectly, or benefited from the commission of the offense; or
- d. a case referred by a Department Head of the agency, or by the Branch Management Panel (BMP) or the Corporate Hearing Panel (CHP); *Provided* that all following conditions concur, to wit:
 - (1) Preliminary investigation on the alleged wrongdoing had been undertaken by the Security Division of the branch or by the Corporate Security Unit (CSU);
 - (2) An officer of PAGCOR is allegedly involved in the commission of the act complained of; and
 - (3) There is a substantial legal issue that requires the expertise of the Corporate Investigation Unit, or there are evidentiary matters that need to be threshed out further.

ARTICLE 18. *Complaint.* - Except when initiated by the disciplining authority *motu proprio* or his/her authorized representative, no complaint shall be given due course unless it is in writing, subscribed and sworn to by the complainant. However, in cases initiated by the disciplining authority or his/her authorized representative, a **show cause order** issued by said disciplining authority or his/her authorized representative thru the Corporate Investigation Unit (CIU) shall be sufficient.

No anonymous complaint shall be entertained unless there is obvious truth or merit to the allegations therein or supported by documentary or direct evidence, in which case the person complained of may be required to comment.

The complaint in triplicate copies shall be written in a clear, simple and concise language and in a systematic manner as to apprise the person complained of, of the nature and cause of the accusation against him/her and to enable him/her to intelligently prepare his/her defense or answer/comment. However, should there be more than one (1) person complained of, the complainant is required to submit additional copies corresponding to the number of persons complained of.

The complaint shall contain the following:

- a) full name and address of the complainant;

- b) full name and address of the person/s complained of as well as his/her/their position/s and office/s;
- c) a narration of the relevant and material facts which shows the acts or omissions allegedly committed;
- d) certified true copies of documentary evidence and affidavits of his/her witnesses, if any; and
- e) certification of non-forum shopping.

In the absence of any one of the aforementioned requirements may cause the dismissal of the complaint without prejudice to its refilling upon compliance with the above requirements.

The **Complaint/Disclosure Form (Annex "H")** shall be attached to the verified complaint.

ARTICLE 19. *Withdrawal of the Complaint.* - The withdrawal of the complaint or the execution of an affidavit of desistance by the complainant does not result in the termination of the Agency investigation into the allegations nor discharge the person complained of from administrative liability. Where there is obvious truth or merit to the allegations in the complaint or where there is documentary evidence that would tend to prove the guilt of the person/s complained of, the same should be given due course.

ARTICLE 20. *Action on the Complaint.* - Upon receipt of a complaint is sufficient in form and substance, the Corporate Investigation Unit shall evaluate the same to determine if it falls under its jurisdiction. Thereupon, the disciplining authority thru the Corporate Investigation Unit (CIU) shall cause the issuance of an **show-cause memorandum** upon the person/s complained of, attaching therewith a copy of the complaint and other supporting documents, and requiring the person/s complained of to submit a **Counter-Affidavit/Comment under oath** within three (3) days from receipt of the order requiring his/her/their comment/s.

ARTICLE 21. *Preliminary Investigation.* -

21.1 Definition. - A preliminary investigation is a proceeding undertaken to determine whether a *prima facie* case exists to warrant the issuance of a formal charge. It involves a fact-finding investigation or an *ex parte* examination of records and documents submitted by the complainant and the person/s complained of, as well as documents readily available from other offices.

21.2 How conducted. - Within five (5) days from receipt of the complaint sufficient in form and substance, the person/s complained of shall be required to submit his/her/their counter-affidavit/comment. Where the complaint is initiated by the disciplining authority, the disciplining authority or the Corporate Investigation Unit (CIU) shall issue a **show-cause memorandum** directing the person/s complained of to explain why no administrative case should be filed against him/her/them. The latter's failure or refusal to submit the comment / counter-affidavit shall be considered a waiver thereof, and the preliminary investigation may be completed even without his/her comment / counter-affidavit. Service of the show-cause memorandum shall be made by the Corporate Investigation Unit (CIU).

If necessary, the parties, witnesses, if any, and resource persons may be summoned to a conference where the investigator may propound clarificatory and other relevant questions.

Upon receipt of the Counter-Affidavit or Comment under oath of the suspect, the Corporate Investigation Unit shall determine whether or not a *prima facie* case exists to warrant the issuance of a formal charge.

21.3 Duration of the Investigation. - A preliminary investigation shall commence not later than five (5) days from receipt of the complaint by the disciplining authority and shall be terminated within twenty (20) days thereafter.

ARTICLE 22. Investigation Report. - Within five (5) days from the termination of the preliminary investigation, the Corporate Investigation Unit (CIU) shall submit the Investigation Report with recommendation and the complete records of the case to the disciplining authority

ARTICLE 23. Resolution After the Preliminary Investigation. - If a *prima facie* case is established during the investigation, the Chairman/President may issue either a formal charge or a notice of charge/s pursuant to these Rules.

ARTICLE 24. Formal Charge and Notice to Explain. - After a finding of a *prima facie* case, the Chairman/President shall formally charge the person complained of, who shall now be called as respondent.

The **Formal Charge** shall state the following:

- i. specification of charge/s, as defined under the PAGCOR Code of Discipline;
- ii. a brief statement of material or relevant facts which must answer the following questions:
 - a) Who committed the alleged offense?
 - b) What actually happened?
 - c) When / Where / How did it happen?
 - d) Witnesses, if any?
- iii. Certified true copies of documentary evidence, if any;
- iv. Sworn statements covering the testimony of witnesses;
- v. An **Order to Explain** directing the respondent to answer the charge/s in writing, under oath within seventy-two (72) hours from receipt thereof;
- vi. An advice for the respondent to indicate in his/her answer whether or not he elects a formal investigation of the charge/s; and
- vii. A notice that he/she may opt to be assisted by a counsel (i.e. lawyer) of his/her choice. However, he (i.e. respondent) must personally appear during the hearing. Counsel shall not be entertained unless the respondent himself is present, and respondent's absence shall be deemed a waiver of his right thereto.

If the respondent has submitted his comment and counter-affidavits during the preliminary investigation, he shall be given the opportunity to submit additional evidence.

ARTICLE 25. Notice of Charge/s. - In instances where the complaint was initiated by a person other than the Chairman/President, the Chairman/President may issue a **notice of charge/s** against the person complained of to which shall be attached copies of the complaint, sworn statement and other documents submitted.

The notice shall contain the following:

- i] the charges against the person complained of with a statement that a *prima facie* case exists;
- ii] an **Order to Explain** directing the respondent to answer the charge/s in writing, under oath in not less than seventy-two (72) hours from receipt thereof;
- iii] An advice for the respondent to indicate in his/her answer whether or not he elects a formal investigation of the charge/s; and
- iv] a notice that he/she may opt to be assisted by a counsel of his/her choice.

ARTICLE 26. Prohibited Pleadings. - No requests for clarification, bills of particulars, motion to dismiss, motion to quash or motion for reconsideration shall be entertained. If any of these pleadings or motions are interposed by the respondent, the same shall be considered as an answer and shall be evaluated as such.

ARTICLE 27. Answer. - The answer, which may either be a specific denial or an affirmation of the allegations in the complaint, shall be in writing, under oath, and must contain 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 include a statement indicating whether or not the respondent elects a formal investigation.

ARTICLE 28. Failure to File Answer. - If the respondent fails or refuses to submit his/her answer to the formal charge or notice of charge/s within the period provided in the formal charge or notice of charge/s which shall not be less than three (3) days from receipt thereof, he/she shall be considered to have waived his right to submit the same, and the case may be decided based on available records.

ARTICLE 29. Preventive Suspension. -

29.1 Nature of preventive suspension. - Preventive suspension pending investigation is not a corrective action / penalty. It is designed merely as a measure of precaution so that the official or employee charged may be removed from the scene of his/her alleged misfeasance/malfeasance/nonfeasance while the same is being investigated. Preventive suspension is separate and distinct from disciplinary suspension.

The period wherein the respondent was under preventive suspension, which shall not exceed ninety (90) days, shall not be deducted from the period of disciplinary suspension meted upon him.

29.2 Duration of Preventive Suspension. - The disciplining authority thru the Chairman/President may place the respondent under preventive suspension for a maximum period of ninety (90) days. When the administrative case against an officer or employee under preventive suspension is not finally decided by the disciplining authority within ninety (90) days from the date of issuance of the order to that effect, he/she shall be automatically reinstated in the service; **Provided** that, when the delay in the disposition of the case which is due to the fault, negligence or petition of the respondent, the period of delay shall not be included in the counting of the ninety (90) calendar days of preventive suspension. Any period of delay caused by motions filed by the respondent shall be added to the period of preventive suspension; **Provided further**, that where the order of preventive suspension is for a period less than the maximum period, the disciplining authority undertakes to finish the formal investigation within the said period and is precluded from imposing another preventive suspension, the ; **Provided furthermore** that, should the respondent be on authorized leave, said preventive suspension shall be deferred or interrupted until such time that said leave has been fully exhausted.

29.3. Requirements for Imposition of Preventive Suspension. - Upon petition of the complainant or *motu proprio*, the proper disciplining authority may issue an order of preventive suspension if **ALL** the following requirements concur:

1) An order of preventive suspension shall be issued by the Chairman / President of the agency upon the recommendation of the General Manager / Manager of the branch, or in the case of Corporate Offices, by the Head of the Human Resource and Development Department (HRDD). The order of preventive suspension shall be subject of approval by the Board of Directors.

a) The purpose for the issuance of an order of preventive suspension pending investigation is to temporarily remove the respondent from the scene of his/her misfeasance, malfeasance or nonfeasance to preclude the possibility of exerting undue influence or pressure on the witnesses against him/her or tampering with evidence that may be used against him/her.

In lieu of preventive suspension, for the same purpose, the head of agency may reassign the respondent to another unit of the agency during the formal hearings.

2) The formal charge, including the particulars or reason therefor, must have been served upon the respondent.

3) The formal charge involves:

- a) Serious dishonesty;
- b) Oppression;
- c) Grave misconduct;
- d) Gross neglect of duty;
- e) Administrative offenses which are punishable by dismissal from the service on its second or third offense; or
- f) If there are reasons to believe that the respondent is probably guilty of the charge/s which would warrant his/her dismissal from the service.

29.4 No back salaries during Preventive Suspension. - No back salaries shall be awarded to the respondent during the period he was placed under **preventive suspension pending investigation**.

ARTICLE 30. – Remedies from the Order of Preventive Suspension. - The respondent may file an appeal before the Civil Service Commission within fifteen (15) days from receipt thereof. Pending appeal, the same shall be executory. A motion for reconsideration from the order of preventive suspension shall not be allowed.

ARTICLE 31. Payment of Back Salaries During Preventive Suspension. - The payment of back salaries during the period of preventive suspension shall be governed by the following:

a. A declaration by the Civil Service Commission that an order of preventive suspension is null and void on its face entitles the respondent official or employee to immediate reinstatement and payment of back salaries corresponding to the period of the unlawful preventive suspension without awaiting the outcome of the main case.

The phrase “**null and void on its face**” in relation to a preventive suspension order, imports any of the following circumstances:

- i) The order was issued by one who is not authorized by law;
- ii) The order failed to satisfy the mandatory requirements for the imposition of an order of preventive suspension;
- iii) The order of preventive suspension was issued without a formal charge or notice of charges;
- iv) While lawful in the sense that it is based on the enumerated grounds, the duration of the imposed preventive suspension has exceeded the prescribed periods, in which case the payment of back salaries shall correspond to the excess period only.

b. A declaration of invalidity of a preventive suspension order not based on any of the reasons enumerated, shall result in the reinstatement of the official or employee concerned. The payment of back salaries shall, however, await the final outcome of the principal case. If the official or employee is fully exonerated of the charge/s or when the penalty imposed in the principal case is reprimand, he or she shall be paid such back salaries. Otherwise, no back salaries shall be awarded.

The phrase “**full exoneration**” contemplates a finding of not guilty for the offense/s charged. The following shall not be construed as “**full exoneration**” within the contemplation of these guidelines:

- a. Downgrading of the charge to a lesser offense;
- b. Reinstatement by reason of a commutation of the penalty;
- c. Being found guilty of a lesser offense; or
- d. Dismissal of the case for reasons other than a finding of guilt against the respondent.

Even if the respondent official or employee is eventually found innocent of the charge/s proffered against him/her, the same shall not give rise to payment of back salaries corresponding to the period of preventive suspension in the absence of any finding of its illegality.

ARTICLE 32. Waiver of Right to a Formal Hearing. - When the right to a formal hearing is waived by the respondent, a resolution may forthwith be rendered on the pleadings and other evidence on hand,

provided that the same are sufficiently substantial to support a resolution or conclusion. Accordingly, the Corporate Investigation Unit (CIU) shall forward the records and the evidence to the Hearing Officer for appropriate action.

If, upon the determination of the Hearing Officer, no such decision or conclusion could be attained on the basis of the evidence on hand, then an *ex parte* hearing on the merits of the case shall be conducted by the Hearing Officer.

ARTICLE 33. Conduct of Formal Investigation. - A formal investigation shall be conducted by the disciplining authority where the merits of the case cannot be decided judiciously without conducting such investigation or when the respondent elects to have one, in which case, the investigation shall be held by the **Hearing Officer** not earlier than five (5) days nor later than ten (10) days from receipt of the respondent's answer or upon the expiration of the period to answer. Said investigation shall be finished within thirty (30) days from the issuance of the formal charge unless the period is extended by the disciplining authority in meritorious cases.

Investigators from the Corporate Investigation Unit (CIU) shall act as the prosecutorial arm of the agency during the formal hearings.

ARTICLE 34. Raffle / Assignment of Cases. - The assignment of a case to a Hearing Officer shall be done strictly through raffle conducted by the Secretary of the Adjudication Committee in the presence of the Hearing Officers in a meeting called for that purpose; **Provided**, That the assignment of cases shall be made as evenly as possible.

ARTICLE 35. Submission of Position Paper / Memorandum. - At any stage of the proceedings, the parties may, based on their mutual consent, submit position paper/memorandum and submit the case for resolution without any need for further hearings.

When there is a need for clarification of certain matters, the Hearing Officer may schedule a hearing to propound clarificatory questions to the parties or their witnesses, during which the parties shall be afforded an opportunity to be present but without the right to examine or cross-examine. If the parties so desire, they may submit questions to the Hearing Officer which the latter may propound to the parties or witnesses concerned. Thereafter, the Hearing Officer concerned shall submit his findings, report and recommendation to the Adjudication Committee within five (5) days from such completion.

ARTICLE 36. Settlement in case of light offenses. -

36.1 Who may avail. - In cases of **light offenses** where the act is purely personal on the part of the private complainant and the person complained of and there is no apparent injury committed to the agency, settlement of offenses may be considered; **Provided** that, the settlement can no longer be applied for the second offense of the same act committed by the person complained of.

36.2 Guidelines. - The following are the guidelines in the settlement of purely personal matters in administrative cases:

- a) Compromise settlement shall be allowed only for administrative light offenses where the act is purely personal between the private complainant and the person complained of and there is no apparent injury to the government;
- b) Upon filing of the complaint, the Corporate Investigation Unit (CIU) or the Security Department (SD) shall determine whether the offense is purely personal or can be the subject of settlement;

The following cases may be the subject of settlement and/or compromise:

- 1) Borrowing money by superior officers from subordinates;
- 2) Will failure to pay just debts;
- 3) Simple Misconduct resulting from misunderstanding / fight between respondent and complainant, provided that the act is not committed within office premises;
- 4) Discourtesy in the course of official duties; and
- 5) Other analogous circumstances / cases.

In these enumerated cases, compromise or settlement can no longer be applied for the second time the same act is committed.

The grant of back salaries and other benefits may likewise be subject of settlement and / or compromise.

- c) If the offense can be the subject of settlement, the investigator of the Corporate Investigation Unit (CIU) or the Security Department (SD) shall order the respondent to comment and to indicate therein whether he/she is willing to submit the case for settlement.
- d) If the person complained of opted for settlement, the Corporate Investigation Unit (CIU) shall endorse the matter to the Committee on Dispute Resolution (CDR). Accordingly, the Executive Clerk of the CDR shall issue summons requiring the appearance of the parties.
- e) If settlement succeeds, a compromise agreement shall be executed between the parties and attested by the Presiding Officer of the Committee on Dispute Resolution (CDR).
- f) If during the settlement process, the parties failed to settle their differences, the Presiding Officer of the Committee on Dispute Resolution (CDR) shall issue an order terminating the process, and remand the case to the proper investigative body to the continuation of the investigation.
- g) In case of non-compliance with the compromise agreement, the case may be reopened for investigation until the final determination of the case.

ARTICLE 37. *Pre-Hearing Conference.* - At the commencement of the formal investigation, the Hearing Officer shall conduct a Pre-Hearing Conference for the parties to appear, consider and agree on any of the following:

- a. Stipulation of facts;
- b. Simplification of issues;
- c. Identification and marking of evidence of the parties;
- d. Waiver of objections to admissibility of evidence;
- e. Limiting the number of witnesses, and their names;
- f. Dates of subsequent hearings; and
- g. Such other matters as may aid in the prompt and just resolution of the case.

The agreement entered into during the pre-hearing conference is binding on both parties unless in the interest of justice, the Hearing Officer may allow a deviation from the same.

The conduct of a pre-hearing conference is mandatory. The failure of the respondent to attend the pre-hearing conference constitutes a waiver to participate in the pre-hearing conference but may still participate in the formal investigation upon appropriate motion.

ARTICLE 38. *Proceedings before the Hearing Officer.* -

38.1 Powers of the Hearing Officer. - The Hearing Officer shall have the following powers:

- a. To conduct the formal investigation of cases brought before the Corporate Investigation Unit (CIU);
- b. To administer oath on all matters or proceedings related to the performance of his duties;
- c. To issue subpoena *ad testificandum* to compel the attendance of witnesses and subpoena *duces tecum* for the production of documents or things;
- d. To impose penalties for violation of these rules; and

- e. To perform such other powers which the Hearing Officer deems necessary for the fair and speedy resolution of the case.

38.2 Inhibition. - A Hearing Officer may voluntarily inhibit himself from the consideration and resolution of a case on any just and valid grounds, as set forth in Rule 137 of the Rules of Court.

ARTICLE 39. The Formal Hearing. –

39.1 Continuous Hearings Until Terminated. - Hearings shall be conducted on the hearing dates set by the Hearing Officer or as agreed upon by the during the Pre-Hearing Conference.

Each party may be granted one (1) postponement upon oral or written request.

If the respondent fails or refuses to appear or is not represented by counsel during the scheduled hearings despite due notice, the investigation shall proceed and the respondent shall be deemed to have waived his/her right to present evidence in his/her favor during the said hearing.

39.2 Preliminary Matters. - At the start of the hearing, the Hearing Officer shall note the appearances of the parties and shall proceed with the reception of evidence for the complainant.

If, after being apprised of the right to counsel, the respondent appears without the aid of a counsel, he/she shall be deemed to have waived his/her right thereto.

Before taking the testimony of a witness, the Hearing Officer shall place him/her under oath and then take his/her name, address, civil status, age and complete name and address of employment.

A sworn statement of the witness/es properly identified and affirmed shall constitute direct testimony, copy furnished the other party.

Clarificatory questions may also be asked.

39.3 Nature of Proceedings. - The proceedings before the Hearing Officer shall be non-litigious and summary in nature. The trial-type hearing practiced in courts shall not be used. The rules of procedure and evidence prevailing in courts of law and equity shall not be controlling and the Hearing Officer may avail of all reasonable means to ascertain the truth and to resolve the case in a fair and expeditious manner.

39.4 Hearing Dates. - The schedule of hearings shall be followed strictly without further notice. Only one (1) postponement shall be granted upon a request actually received by the Hearing Officer three (3) calendar days before the scheduled hearing.

If the respondent fails or refuses to appear during the scheduled hearing despite due notice, the investigation shall proceed *ex parte* and the respondent shall be deemed to have waived his right to be present and to submit evidence for his defense.

39.5 The Hearing Proper. - The Hearing Officer shall exercise complete control of the proceedings at all stages. He shall take full control of the proceedings, examine the parties and their witnesses to satisfy himself with respect to the matters at issue, and may allow the parties or their counsel to ask questions only for the purpose of clarifying points of law or fact involved in the case. The Hearing Officer shall limit the presentation of evidence to matters relevant to the issue before him and necessary for a just and speedy disposition of the case.

The Hearing Officer shall conduct a closed and confidential session. It shall have the authority to summon the concerned employee, witnesses, or resource person and to request production of evidence pertinent to the inquiry.

The following ground rules shall be observed:

- 1) The Hearing Officer shall preside over its sessions.
- 2) Every case shall be heard in one sitting, except in complex cases where it may set one or two issues for hearing from day to day until such hearing is terminated.

3) Witnesses may shall be excluded during the testimony of any party or other witness. The Hearing Officer shall exercise reasonable control over the order and number of witnesses to be heard.

4) All witnesses shall testify in person. All persons who are summoned to testify before the Hearing Officer to shed light to the circumstances of the case must personally appear. Inexcusable failure on the part of any employee who, despite due notice, failed or refused to appear before the Hearing Officer may be subjected to disciplinary action.

5) Copies of any document in support of the party's statement or any paper necessary in the disposition of the case which is in the possession of the party shall be provided by him upon the request of the Hearing Officer.

6) The strict rules of evidence shall not apply but the rules of courtesy and respect shall apply. This shall assure free-flowing examinations of all witnesses.

7) The Hearing Officer shall, as far as practicable, position the parties, their counsels, and witnesses in such a manner that they are able to see each other, thus facilitating dialogue among them.

8) The parties and their witnesses shall simultaneously swear to the truth of the testimonies they will give during the adjudication hearing.

9) The Hearing Officer shall hear the factual issues of the case in the order in which these have been drawn up during the pre-hearing conference. Two or more related issues may be heard together.

10) Unless the Hearing Officer directs otherwise, the **order of hearing** may be as follows:

- a) The prosecution shall present its evidence;
- b) The respondent shall present evidence in support of his/her defense;
- c) There may be rebuttal of sur-rebuttal.

11) All **objections** raised during the hearing shall be resolved by the Hearing Officer. However, objections that cannot be ruled upon by the Committee shall be noted with the information that the same shall be included in the memorandum of the concerned party to be ruled upon by the Adjudication Committee.

The Hearing Officer shall admit all evidence formally offered subject to the objection/s interposed against its admission.

12) Upon the conclusion of the presentation of witnesses and evidence, the parties shall **formally offer** their evidence either orally or in writing. Thereafter, both parties may be given time to submit their respective memorandum which in no case shall be beyond five (5) days after the termination of the investigation. Failure to submit the same within the given period shall be considered a waiver thereof.

13) All documentary evidence or exhibits shall be properly **marked** by letters (A, B, C, etc.), if presented by the complainant, and by numbers (1, 2, 3, etc.), if presented by the respondent. These shall form part of the complete records of the case.

14) Records of the proceedings during the formal investigation may be taken by shorthand, audiotape, video recording, or by any other means.

15) When the Hearing Officer has already taken up all the factual issues in the case, he may at his discretion allow each party to make a closing argument.

39.6 Disposition of the case. - The Hearing Officer may, in the exercise of his sound discretion:

- 1) Dismiss the case for insufficient evidence or for lack of merit;
- 2) Find the respondent guilty of the act or omission complained of, and recommend appropriate sanctions;
- 3) Remand the case to the Corporate Investigation Unit for reinvestigation, and reconvene to continue the hearing;
- 4) Call for the presentation of oral arguments on an issue which, in the interest of justice and equity, is necessary for a fair resolution of the case; or
- 5) Archive the matter for good cause shown, in the judgment of the Hearing Officer. Good cause may include an actual or impending criminal indictment against the respondent.

39.7 Appearance of Advisor/Counsel. - The appearance of an advisor/counsel is optional. An advisor may be an attorney or any other adult person.

An advisor/counsel may attend the hearing and sit near his advisee/client during the hearing; communicate quietly with his advisee/client during the hearing; and may respond to a direct question from the Hearing Officer. An advisor/counsel may not make an oral presentation at the hearing and may not submit a written request directly to the Hearing Officer, although an advisor/counsel may assist his advisee/client to prepare written submissions.

Any counsel who is a member of the Philippine Bar appearing before any hearing or investigation shall manifest orally or in writing, his appearance for either the respondent or the complainant, stating –

- a. his full name;
- b. Mailing address, which is not a post office box number;
- c. Telephone/cellular phone number and e-mail address, if available;
- d. Roll of Attorneys Number;
- e. IBP Official Receipt Number or IBP Lifetime Membership Number, including the date and place of issue;
- f. Current Professional Tax Receipt (PTR) Number, including the date and place of issue;
- g. Mandatory Continuing Legal Education (MCLE) Compliance or Exemption Certificate Number and the date of issue.

If the lawyer is a government employee, he/she shall be required to present an authority to practice profession which should come from the agency head or the agency head's authorized representative.

A non-lawyer who assists or accompanies a party shall show a special power of attorney authorizing such person to appear with such party. In case the party is out of the country and the advisor represents him, the special power of attorney must be authenticated by the consular office concerned and comply with other applicable formalities for their execution.

Any pleading or appearance of an advisor/counsel without complying with any of the above-stated requirements shall not be recognized.

39.8 Disruptive Behavior. - Disruptive behavior or discourtesy by any participant in the hearing is ground for expulsion from the hearing.

39.9 Witnesses. - The Hearing Officer shall have the right to question any and all witnesses, to examine documentary evidence presented, and to call other witnesses. Witnesses shall not be present during the testimony of any party or other witness. The Hearing Officer shall exercise reasonable control over the order and number of witnesses to be heard.

39.10 Per diems. - The Hearing Officer and investigators from the Corporate Investigation Unit (CIU) who actually participated in the formal investigation shall be entitled to per diems for every hearing day.

ARTICLE 40. Filing of Pleadings. - All pleadings filed by the parties with the disciplining authority or his authorized representative shall be copy furnished the other party with proof of service. Any

pleadings sent by registered mail shall be deemed filed on the date shown by the postmark on the envelope which shall be attached to the records of the case and in the case of personal delivery, the date stamped thereon by the disciplining office.

No pleadings shall be filed *via* e-mail, facsimile or any other electronic medium.

ARTICLE 41. *Formal Investigation Report.* - Within fifteen (15) days after the conclusion of the formal investigation, a report containing a narration of the material facts established during the investigation and hearings, the findings and the evidence supporting said findings, as well as the recommendations, shall be submitted by the Hearing Officer to the disciplinary authority. The complete record of the case shall be attached to the Formal Investigation Report.

The complete records shall be systematically and chronologically arranged, paged and securely bound to prevent loss. A table of contents shall be prepared.

ARTICLE 42. *The Adjudication Committee.* -

42.1 Automatic Review of Resolution of the Hearing Officer. - Within ten (10) following the conclusion of the formal hearings before the Hearing Officer, the Formal Investigation Report and the record of the case shall be submitted to the Adjudication Committee for evaluation and review. Thereafter, the Executive Clerk of the Adjudication Committee shall submit its resolution, report and recommendation to the Board of Directors.

42.2 Quorum; Votes Required. - A simple majority of all the members of the Adjudication Committee shall be necessary to constitute a quorum to deliberate on and decide any matter before it. Further, the vote or concurrence of a majority of the members constituting a quorum shall be necessary for the pronouncement of a decision, resolution, order or ruling.

The Chairperson and members of the Adjudication Committee shall each have one (1) vote.

Voting by proxy or thru a representative shall not be valid.

42.3 Abstention. - Any member may abstain from voting of any case/matter before the Committee on legal or justifiable grounds.

ARTICLE 43. *When Case is Decided.* - The Board of Directors shall render its decision on the case within thirty (30) days from receipt of the Report/Recommendation of the Adjudication Committee.

ARTICLE 44. *Finality of the Decision.* - A decision rendered by the Board of Directors whereby a corrective action / penalty of suspension for not more than thirty (30) days or a fine in an amount not exceeding thirty (30) days' salary is imposed, shall be final, executory and not appealable, unless a motion for reconsideration is seasonably filed. However, the respondent may file an appeal when the issue raised is a violation of due process.

If the corrective action / penalty imposed is suspension exceeding thirty (30) days, or fine in an amount exceeding thirty (30) days' salary, demotion or dismissal, the same shall be final and executory after the lapse of the reglementary period for filing a motion for reconsideration or an appeal and no such motion or pleading has been filed.

ARTICLE 45. *Contents of the Decision.* - The decision shall include a brief statement of:

- (a) the parties;
- (b) the facts of the case;
- (c) the issue/s involved;
- (d) the applicable law or rules;
- (e) the conclusions and reasons therefor;
- (f) the relevant evidence, circumstances and factors that were considered as basis for either the exoneration or the imposition of the appropriate corrective action / penalty; and
- (g) the approval by a majority of the members of the Board of Directors.

ARTICLE 46. Service of Decision. - Decisions of the Board of Directors shall be served by the Human Resource and Development Department (HRDD) either personally or by registered mail at respondent's place of assignment or at his last known address within three (3) days from rendition thereof.

In all cases, proof of such service shall be attached to the records for information and ready reference.

ARTICLE 47. Motion for Reconsideration. -

47.1 Filing deadline. - The party adversely affected by the decision may file a motion for reconsideration with the Board of Directors within fifteen (15) calendar days from receipt thereof.

No request for extension of the period within which to file a motion for reconsideration shall be allowed.

47.2 When deemed filed. - A motion for reconsideration sent by registered mail shall be deemed filed on the date shown by the postmark on the envelope which shall be attached to the records of the case. In case of personal delivery, it is deemed filed on the date stamped thereon by the proper office.

47.3 Procedure. - The following procedural sequence shall be followed:

1. Following receipt by the erring corporate employee of the decision of the Board of Directors, he may manifest his **intent to appeal** thru the form furnished by the HRDD.
2. Within fifteen (15) calendar days from the time the erring corporate employee was notified of the adverse decision, he shall file his **letter of request** (i.e. motion for reconsideration) with the office of the head / officer-in-charge of the Human Resource and Development Department (HRDD).
3. The HRDD shall -
 - a] transmit the appeal to the Adjudication Committee (AC), **AND**
 - b] certify that an appeal had been filed within the non-extendible period of fifteen (15) calendar days.
6. After deliberation on the merits of the appeal, the Adjudication Committee *en banc* shall resolve whether to grant or deny the appeal.
7. The resolution / recommendation of the Adjudication Committee *en banc* shall be forwarded to the Board of Directors for appropriate action.

47.4 Limitations. - The filing of a motion for reconsideration shall be limited exclusively to the following **grounds**:

- 1) Newly discovered evidence which materially affects the decision rendered;
- 2) The decision is not supported by the evidence on record; or
- 3) Errors of law or irregularities have been committed prejudicial to the interest of the movant.

Only one (1) motion for reconsideration shall be entertained. If a second motion for reconsideration is filed notwithstanding its prohibition under these Rules, the finality of action shall be reckoned from the denial of the first motion for reconsideration.

46.5 Effect of Filing. - The filing of a motion for reconsideration within the reglementary period of fifteen (15) days shall stay the execution the decision sought to be reconsidered.

ARTICLE 48. Appeal. –

48.1 Filing. - Should the motion for reconsideration be denied, the respondent may appeal the matter to the Civil Service Commission (CSC) Proper within fifteen (15) days from receipt thereof.

An appeal shall not stop the decision of the head of agency from being immediately executory.

Where the penalty is suspension exceeding thirty (30) days or fine in an amount exceeding thirty (30) days' salary, demotion, or dismissal, the decision rendered by the head of agency is appealable to the Commission Proper within a period of fifteen (15) days from receipt thereof.

48.2 When deemed filed. - An appeal sent by registered mail shall be deemed filed on the date shown on the postmark on the envelope which shall be attached to the records of the case. In case of personal delivery, it is deemed filed on the date stamped thereon by the proper office.

48.3 Appeal fee. - The appellant shall pay an appeal fee and a copy of the official receipt thereof shall be attached to the appeal.

48.4 Perfection of an appeal. - To perfect an appeal, the appellant shall submit three (3) copies of the following documents:

- a. Appeal memorandum containing the grounds relied upon for the appeal, together with the certified true copy of the decision, resolution or order appealed from, and certified copies of the documents or evidence. The appeal memorandum shall be filed with the appellate authority, copy furnished the agency. The latter shall submit the records of the case, which shall be systematically and chronologically arranged, paged and securely bound to prevent loss, with its comment, within fifteen (15) days to the appellate authority.
- b. Proof of service of a copy of the appeal memorandum to the disciplining office;
- c. Proof of payment of the appeal fee; and
- d. A statement or certification of non-forum shopping.

When an appellant fails to comply with any of the above requirements within the reglementary period, the Commission shall direct compliance within a period of not more than ten (10) days from receipt thereof, with a warning that failure to comply shall be construed as failure to perfect an appeal and shall cause the dismissal of the appeal with prejudice to its refiling.

An appeal sent by mail shall be deemed filed on the date shown by the postmark on the envelope which shall be attached to the records of the case. In the case of personal delivery, the date stamped thereon by the proper office shall be the point of reference.

TITLE III

**RULES GOVERNING CASES COGNIZABLE BY
THE CORPORATE HEARING PANEL**

ARTICLE 49. Coverage. - Subject to the provisions with respect to cases cognizable by the Corporate Investigation Unit (CIU), these rules shall govern administrative investigations and proceedings concerning offenses allegedly committed by a rank-and-file employee, whether probationary, contractual, casual, regular, or confidential, in any of the Corporate offices of the agency.

ARTICLE 50. Exclusions. - The following cases shall be excluded from the application of the rules hereunder:

a. A case wherein a rank-and-file employee allegedly cooperated, conspired or benefited from a malfeasance/misfeasance or nonfeasance committed by an officer of the agency. In this regard, such case shall be referred to the Corporate Investigation Unit (CIU-CLSD);

b. A case involving rank-and-file employees of Casino Filipino branch, satellite casino, arcade, bingo venue, poker club, and the like;

c. A case within the sphere of competence of the Human Resource and Development Department (HRDD), such as but not limited to the following:

- i) Unauthorized absence;
- ii) Habitual absenteeism;
- iii) Habitual tardiness;
- iv) Excessive breaktime;
- v) Violation of rules on attendance and leave;
- vi) Attendance fraud; and
- vii) Violation of rules on proper notification of absence.

ARTICLE 51. *The Complaint or the Incident Report.* - A complaint relating to an offense defined under the PAGCOR Code of Discipline, may be initiated by –

- (a) the Head of the Department / Unit concerned; or
- (b) any person whose right or interest has been prejudiced by an act or omission allegedly committed by an erring employee. In this case, the complaint must be in writing and under oath.

Where the complaint is initiated by the Head of the Department / Unit to which the erring employee is assigned / detailed, an Incident Report shall be prepared by the Head of the Department / Unit. This Incident Report need not be under oath.

The complaint or Incident Report shall be submitted to the Security Department (SD) for the preliminary investigation.

No anonymous complaint shall be entertained unless there is obvious truth or merit to the allegations therein or supported by documentary or direct evidence, in which case the person complained of may be required to comment.

The complaint in triplicate copies shall be written in a clear, simple and concise language and in a systematic manner as to apprise the person complained of, of the nature and cause of the accusation against him/her and to enable him/her to intelligently prepare his/her defense or answer/comment. However, should there be more than one (1) person complained of, the complainant is required to submit additional copies corresponding to the number of persons complained of.

The complaint shall contain the following:

- a. full name and address of the complainant;
- b. full name and address of the person/s complained of as well as his/her/their position/s and office/s;
- c. a narration of the relevant and material facts which shows the acts or omissions allegedly committed;
- d. certified true copies of documentary evidence and affidavits of his/her witnesses, if any; and
- e. certification of non-forum shopping.

In the absence of any one of the aforementioned requirements may cause the dismissal of the complaint without prejudice to its refiling upon compliance with the above requirements.

The **Complaint/Disclosure Form (Annex “H”)** shall be attached to the verified complaint.

ARTICLE 52. *Withdrawal of the Complaint.* - The withdrawal of the complaint or the execution of an affidavit of desistance by the complainant does not result in the termination of the agency investigation into the allegations nor discharge the person complained of from administrative liability. Where there is obvious truth or merit to the allegations in the complaint or where there is documentary evidence that would tend to prove the guilt of the person complained of, the same should be given due course.

ARTICLE 53. *Action on the Complaint.* - Upon receipt of a complaint which is sufficient in form and substance, the disciplining authority thru the Security Department (SD) shall issue a **show-cause memorandum** upon the person complained of, attaching therewith a copy of the complaint and other supporting documents, and requiring the person complained of to submit a **Counter-Affidavit / Comment under oath** within three (3) days from receipt of the order requiring his/her/their comment/s.

On the basis of the report of any incident, anomaly or irregularity, the Security Department may *motu proprio*, initiate the filing of a complaint against the allegedly erring employee after conducting an initial inquiry.

ARTICLE 54. *Preliminary Investigation.* -

54.1 Definition. - A preliminary investigation is a proceeding undertaken to determine whether a *prima facie* case exists to warrant the issuance of a formal charge. It involves a fact-finding investigation or an *ex parte* examination of records and documents submitted by the complainant and the person/s complained of, as well as documents readily available from other offices.

54.2 How conducted. - Within five (5) days from receipt of the complaint sufficient in form and substance, the person/s complained of shall be required to submit his/her/their **counter-affidavit/comment under oath**. Where the complaint is initiated by the disciplining authority, the Security Department (SD) shall issue a **show-cause memorandum** directing the person/s complained of to explain why no administrative case should be filed against him/her/them. The latter's failure or refusal to submit the counter-affidavit/comment under oath shall be considered a waiver thereof, and the preliminary investigation may be completed even without his/her counter-affidavit.

If necessary, the parties, witnesses, if any, the parties may be summoned to a conference where the investigator may propound clarificatory and other relevant questions.

Upon receipt of the Counter-Affidavit / Comment under oath of the suspect, the Security Department (SD) shall determine whether or not a *prima facie* case exists to warrant the issuance of a formal charge.

54.3 Duration of the Investigation. - A preliminary investigation shall commence not later than five (5) days from receipt of the complaint by the disciplining authority and shall be terminated within twenty (20) days thereafter.

ARTICLE 55. *Investigation Report.* - Within five (5) days from the termination of the preliminary investigation, the Security Department (SD) shall submit the Investigation Report with recommendation and the complete records of the case to the disciplining authority

ARTICLE 56. *Resolution After the Preliminary Investigation.* - If a *prima facie* case is established during the investigation, the disciplining authority may issue either a formal charge or a notice of charge/s pursuant to these Rules.

In the absence of a *prima facie* case, the complaint shall be dismissed.

ARTICLE 57. *Formal Charge and Notice to Explain.* - After a finding of a *prima facie* case, the Chairman/President shall formally charge the person complained of, who shall now be called as respondent.

Pursuant to the power vested upon him by the Board of Directors, the head of the agency, upon the recommendation of the Security Department, shall order the issuance of the formal charge to the respondent. Service of the formal charge shall be done by the Security Department.

The **Formal Charge** shall state the following:

- i] specification of charge/s, as defined under the PAGCOR Code of Discipline;
- ii] a brief statement of material or relevant facts which must answer the following questions:
 - a) Who committed the alleged offense?
 - b) What actually happened?
 - c) When / Where / How did it happen?
 - d) Witnesses, if any?
- iii] certified true copies of documentary evidence, if any;
- iv] sworn statements covering the testimony of witnesses;
- v] a **Notice to Explain** directing the respondent to answer the charge/s in writing, under oath within seventy-two (72) hours from receipt thereof;
- vi] an advice for the respondent to indicate in his/her answer whether or not he elects a formal investigation of the charge/s; and
- vii] a notice that he/she may opt to be assisted by a counsel (i.e. lawyer) of his/her choice. However, he (i.e. respondent) must personally appear during the hearing. Counsel shall not be entertained unless the respondent himself is present, and respondent's absence shall be deemed a waiver of his right thereto.

If the respondent has submitted his comment and counter-affidavits during the preliminary investigation, he shall be given the opportunity to submit additional evidence.

ARTICLE 58. Notice of Charge/s. - In instances where the complaint was initiated by a person other than the disciplining authority, the Chairman/President of the agency may issue a notice of charge/s against the person complained of to which shall be attached copies of the complaint, sworn statement and other documents submitted. Service of said notice of charges shall be made by the Security Department (SD).

When, on the basis of a security personnel's personal knowledge of facts and circumstances, it has been established that an officer of the agency who was apprehended by security personnel, has committed, is actually committing, or is attempting to commit an offense, whether acting alone or in concert with a co-employee or a private individual, notice of charge/s may be issued by the Chairman/President of the agency and served upon the offender by the Security Division.

The notice shall contain the following:

- i] charge/s against the person complained of with a statement that a *prima facie* case exists;
- ii] an **Order to Explain** directing the respondent to answer the charge/s in writing, under oath in not less than seventy-two (72) hours from receipt thereof; and
- iii] an advice for the respondent to indicate in his/her answer whether or not he elects a formal investigation of the charge/s; and
- iv] a notice that he/she may opt to be assisted by a counsel of his/her choice.

ARTICLE 59. Prohibited Pleadings. - No requests for clarification, bills of particulars, motion to dismiss, motion to quash or motion for reconsideration shall be entertained. If any of these pleadings or motions are interposed by the respondent, the same shall be considered as an answer and shall be evaluated as such.

ARTICLE 60. Answer. - The answer, which may either be a specific denial or an affirmation of the allegations in the complaint, shall be in writing, under oath, and must contain 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 include a statement indicating whether or not the respondent elects a formal investigation.

ARTICLE 61. Failure to File Answer. - If the respondent fails or refuses to submit his/her answer to the formal charge or notice of charge/s within the period provided in the formal charge or notice of charge/s which shall not be less than three (3) days from receipt thereof, he/she shall be considered to have waived his right to submit the same, and the case may be decided based on available records.

ARTICLE 62. Preventive Suspension. -

62.1 Nature of preventive suspension. - Preventive suspension pending investigation is not a corrective action / penalty. It is designed merely as a measure of precaution so that the official or employee charged may be removed from the scene of his/her alleged misfeasance/malffeasance/nonfeasance while the same is being investigated. Preventive suspension is separate and distinct from disciplinary suspension.

The period wherein the respondent was under preventive suspension, which shall not exceed ninety (90) days, shall not be deducted from the period of disciplinary suspension meted upon him.

62.2 Duration of Preventive Suspension. - The Chairman/President may place the respondent under preventive suspension for a maximum period of ninety (90) days. When the administrative case against an officer or employee under preventive suspension is not finally decided by the disciplining authority within ninety (90) days from the date of issuance of the order to that effect, he/she shall be automatically reinstated in the service; **Provided** that, when the delay in the disposition of the case which is due to the fault, negligence or petition of the respondent, the period of delay shall not be included in the counting of the ninety (90) calendar days of preventive suspension. Any period of delay caused by motions filed by the respondent shall be added to the period of preventive suspension; **Provided further**, that where the order of preventive suspension is for a period less than the maximum period, the disciplining authority undertakes to finish the formal investigation within the said period and is precluded from imposing another preventive suspension, the ; **Provided furthermore** that, should the respondent be on authorized leave, said preventive suspension shall be deferred or interrupted until such time that said leave has been fully exhausted.

62.3. Requirements for Imposition of Preventive Suspension. - Upon petition of the complainant or *motu proprio*, the proper disciplining authority may issue an order of preventive suspension if **ALL** the following requirements concur:

1) An order of preventive suspension shall be issued by the Chairman/President of the agency upon the recommendation of the General Manager / Manager of the branch, or in the case of Corporate Offices, by the Head of the Human Resource and Development Department (HRDD). The order of preventive suspension shall be subject to approval by the Board of Directors.

2) The purpose for the issuance of an order of preventive suspension pending investigation is to temporarily remove the respondent from the scene of his/her misfeasance, malffeasance or nonfeasance to preclude the possibility of:

- a) exerting undue influence or pressure on the witnesses against him/her; or
- b) tampering with evidence that may be used against him/her.

In lieu of preventive suspension, for the same purpose, the head of agency may reassign the respondent to another unit of the agency during the formal hearings.

c) The formal charge, including the particulars or reason therefor, must have been served upon the respondent.

d) The formal charge involves:

- 1) Serious dishonesty;

- 2) Oppression;
- 3) Grave misconduct;
- 4) Gross neglect of duty;
- 5) Administrative offenses which are punishable by dismissal from the service on its second or third offense; or
- 6) If there are reasons to believe that the respondent is probably guilty of the charge/s which would warrant his/her dismissal from the service.

62.4 No back salaries during Preventive Suspension. - No back salaries shall be awarded to the respondent during the period he was placed under **preventive suspension pending investigation**.

ARTICLE 63. – Remedies from the Order of Preventive Suspension. - The respondent may file an appeal to the Civil Service Commission within fifteen (15) days from receipt thereof. Pending appeal, the same shall be executory. A motion for reconsideration from the order of preventive suspension shall not be allowed.

ARTICLE 64. Payment of Back Salaries During Preventive Suspension. - The payment of back salaries during the period of preventive suspension shall be governed by the following:

a. A declaration by the Civil Service Commission that an order of preventive suspension is null and void on its face entitles the respondent official or employee to immediate reinstatement and payment of back salaries corresponding to the period of the unlawful preventive suspension without awaiting the outcome of the main case.

The phrase “**null and void on its face**” in relation to a preventive suspension order, imports any of the following circumstances:

- i. The order was issued by one who is not authorized by law;
- ii. The order failed to satisfy the mandatory requirements for the imposition of an order of preventive suspension;
- iii. The order of preventive suspension was issued without a formal charge or notice of charges;
- iv. While lawful in the sense that it is based on the enumerated grounds, the duration of the imposed preventive suspension has exceeded the prescribed periods, in which case the payment of back salaries shall correspond to the excess period only.

b. A declaration of invalidity of a preventive suspension order not based on any of the reasons enumerated, shall result in the reinstatement of the official or employee concerned. The payment of back salaries shall, however, await the final outcome of the principal case. If the official or employee is fully exonerated of the charge/s or when the penalty imposed in the principal case is reprimand, he or she shall be paid such back salaries. Otherwise, no back salaries shall be awarded.

The phrase “**full exoneration**” contemplates a finding of not guilty for the offense/s charged. The following shall not be construed as “*full exoneration*” within the contemplation of these guidelines:

- i. Downgrading of the charge to a lesser offense;
- ii. Reinstatement by reason of a commutation of the penalty;
- iii. Being found guilty of a lesser offense; or
- iv. Dismissal of the case for reasons other than a finding of guilt against the respondent.

Even if the respondent official or employee is eventually found innocent of the charge/s proffered against him/her, the same shall not give rise to payment of back salaries corresponding to the period of preventive suspension in the absence of any finding of its illegality.

ARTICLE 65. Waiver of Right to a Formal Hearing. - When the right to a formal hearing is waived by the respondent, a resolution may forthwith be rendered on the pleadings and other evidence on hand, provided that the same are sufficiently substantial to support a resolution or conclusion. Accordingly, the

Security Department (SD) shall forward the records and the evidence to the Corporate Hearing Panel (CHP) for appropriate action.

If, upon the determination of the Corporate Hearing Panel (CHP), no such decision or conclusion could be attained on the basis of the evidence on hand, then an *ex parte* hearing on the merits of the case shall be conducted by the Panel.

ARTICLE 66. Conduct of Formal Investigation. - - A formal investigation shall be conducted by the disciplining authority where the merits of the case cannot be decided judiciously without conducting such investigation or when the respondent elects to have one, in which case, the investigation shall be held by the **Corporate Hearing Panel (CHP)** not earlier than five (5) days nor later than ten (10) days from receipt of the respondent's answer or upon the expiration of the period to answer. Said investigation shall be finished within thirty (30) days from the issuance of the formal charge unless the period is extended by the disciplining authority in meritorious cases.

Investigators from the Security Department (SD) shall act as the prosecutorial arm of the agency during the formal hearings.

ARTICLE 67. Submission of Position Paper / Memorandum. - At any stage of the proceedings, the parties may, based on their mutual consent, submit position paper/memorandum and submit the case for resolution without any need for further hearings.

When there is a need for clarification of certain matters, the Corporate Hearing Panel (CHP) may schedule a hearing to propound clarificatory questions to the parties or their witnesses, during which the parties shall be afforded an opportunity to be present but without the right to examine or cross-examine. If the parties so desire, they may submit questions to the Corporate Hearing Panel (CHP) which the latter may propound to the parties or witnesses concerned. Thereafter, the Corporate Hearing Panel (CHP) shall submit his findings, report and recommendation to the Adjudication Committee within five (5) days from such completion.

ARTICLE 68. Settlement in case of light offenses. -

68.1 Who may avail. - In cases of **light offenses** where the act is purely personal on the part of the private complainant and the person complained of and there is no apparent injury committed to the agency, settlement of offenses may be considered; **Provided** that, the settlement can no longer be applied for the second offense of the same act committed by the person complained of.

68.2 Guidelines. - The following are the guidelines in the settlement of purely personal matters in administrative cases:

- a) Compromise settlement shall be allowed only for administrative light offenses where the act is purely personal between the private complainant and the person complained of and there is no apparent injury to the government;
- b) Upon filing of the complaint, the Security Department (SD) shall determine whether the offense is purely personal or can be the subject of settlement;
- c) The following cases may be the subject of settlement and/or compromise:
 - 1) Borrowing money by superior officers from subordinates;
 - 2) Willful failure to pay just debts;
 - 3) Simple Misconduct resulting from misunderstanding / fight between respondent and complainant, provided that the act is not committed within office premises;
 - 4) Discourtesy in the course of official duties; and
 - 5) Other analogous circumstances / cases.

In these enumerated cases, compromise or settlement can no longer be applied for the second time the same act is committed.

The grant of back salaries and other benefits may likewise be subject of settlement and / or compromise.

- d) If the offense can be the subject of settlement, the Security Department (SD) shall order the respondent to comment and to indicate therein whether he/she is willing to submit the case for settlement.

- e) If the person complained of opted for settlement, the Security Department (SD) shall endorse the matter to the **Committee on Dispute Resolution (CDR)**. Accordingly, the Executive Clerk of the CDR shall issue summons requiring the appearance of the parties.
- f) If settlement succeeds, a compromise agreement shall be executed between the parties and attested by the Presiding Officer of the Committee on Dispute Resolution (CDR).
- g) If during the settlement process, the parties failed to settle their differences, the Presiding Officer of the Committee on Dispute Resolution (CDR) shall issue an order terminating the process, and remand the case to the proper investigative body to the continuation of the investigation.
- h) In case of non-compliance with the compromise agreement, the case may be reopened for investigation until the final determination of the case.

ARTICLE 69. Pre-Hearing Conference. - At the commencement of the formal investigation, the **Corporate Hearing Panel (CHP)** shall conduct a Pre-Hearing Conference for the parties to appear, consider and agree on any of the following:

- a. Stipulation of facts;
- b. Simplification of issues;
- c. Identification and marking of evidence of the parties;
- d. Waiver of objections to admissibility of evidence;
- e. Limiting the number of witnesses, and their names;
- f. Dates of subsequent hearings; and
- g. Such other matters as may aid in the prompt and just resolution of the case.

The agreement entered into during the pre-hearing conference is binding on both parties unless in the interest of justice, the Hearing Officer may allow a deviation from the same.

The conduct of a pre-hearing conference is **mandatory**. The failure of the respondent to attend the pre-hearing conference constitutes a waiver to participate in the pre-hearing conference but may still participate in the formal investigation upon appropriate motion.

ARTICLE 70. Proceedings before the Corporate Hearing Panel. -

70.1 Powers of the Corporate Hearing Panel (CHP). - The Corporate Hearing Panel (CHP) shall have the following powers:

- a. To conduct the formal investigation of cases concerning offenses allegedly committed by rank-and-file employees of the Corporate offices;
- b. To administer oath on all matters or proceedings related to the performance of his duties;
- c. To issue subpoena *ad testificandum* to compel the attendance of witnesses and subpoena *duces tecum* for the production of documents or things;
- d. To impose penalties for violation of these rules; and
- e. To perform such other powers which the Panel deems necessary for the fair and speedy resolution of the case.

70.2 Cases Cognizable by the Corporate Hearing Panel (CHP). -

A. Original Jurisdiction. - The Corporate Hearing Panel (CHP) shall exercise exclusive original jurisdiction over cases with respect to offenses allegedly committed by a rank-and-file employee of the Corporate offices.

B. Appellate Jurisdiction - The Corporate Hearing Panel (CHP) may, upon automatic review, affirm, modify or reverse the resolution/report/recommendation of the Bingo Department Infraction Committee (BDIC).

C. Exclusions. - The following cases shall be excluded from the jurisdiction of the Corporate Hearing Panel (CHP):

- 1) Sexual offenses, which are cognizable by the Committee on Decorum and Ethics (CODE);
- 2) Cases cognizable by the Corporate Investigation Unit (CIU);
- 3) Cases cognizable by the Branch Management Panel (BMP); and
- 4) Cases cognizable by the Branch Infraction Committee (BIC).

70.3 Composition. - The Chairperson and members of the Corporate Hearing Panel (CHP) shall be appointed by the Board of Directors.

70.4 The Secretary of the BMP. – The Secretary of the CHP shall be appointed by the Board of Directors. The Secretary shall be a non-voting member.

The Secretary shall perform the following duties and responsibilities:

- 1) Prepares and calendars agenda and minutes of the meeting;
- 2) Records the entire proceedings of the Panel;
- 3) Distributes agenda to the members at least one (1) day before the scheduled meeting;
- 4) Serves letter of invitation to the employee and witnesses being called to explain before the Panel;
- 5) Acts as custodian of all the records of the case together with all the evidence necessary for the documentation of the proceedings, files and exhibits;
- 6) Monitors deferred cases; and
- 7) Performs other functions as may be directed by the Chairperson.

ARTICLE 71. *The Formal Hearing.* –

71.1 Continuous Hearings Until Terminated. - Hearings shall be conducted on the hearing dates set by the Secretary of the Corporate Hearing Panel (CHP) or as agreed upon by the during the Pre-Hearing Conference.

Each party may be granted one (1) postponement upon oral or written request.

If the respondent fails or refuses to appear or is not represented by counsel during the scheduled hearings despite due notice, the investigation shall proceed and the respondent shall be deemed to have waived his/her right to present evidence in his/her favor during the said hearing.

71.2 Preliminary Matters. - At the start of the hearing, the Presiding Officer of the Corporate Hearing Panel (CHP) shall note the appearances of the parties and shall proceed with the reception of evidence for the complainant.

If, after being apprised of the right to counsel, the respondent appears without the aid of a counsel, he/she shall be deemed to have waived his/her right thereto.

Before taking the testimony of a witness, the Secretary of the Corporate Hearing Panel (CHP) shall place him/her under oath and then take his/her name, address, civil status, age and complete name and address of employment.

A sworn statement of the witness/es properly identified and affirmed shall constitute direct testimony, copy furnished the other party.

Clarificatory questions may also be asked.

71.3 Nature of Proceedings. - The proceedings before the Corporate Hearing Panel (CHP) shall be non-litigious and summary in nature. The trial-type hearing practiced in courts shall not be used. The rules of procedure and evidence prevailing in courts of law and equity shall not be controlling and the Corporate Hearing Panel (CHP) may avail of all reasonable means to ascertain the truth and to resolve the case in a fair and expeditious manner.

71.4 Hearing Dates. - The schedule of hearings shall be followed strictly without further notice. Only one (1) postponement shall be granted upon a request actually received by the Secretary of the Corporate Hearing Panel (CHP) three (3) calendar days before the scheduled hearing.

If the respondent fails or refuses to appear during the scheduled hearing despite due notice, the investigation shall proceed *ex parte* and the respondent shall be deemed to have waived his right to be present and to submit evidence for his defense.

71.5 The Hearing Proper. - The Presiding Officer of the Corporate Hearing Panel (CHP) shall exercise complete control of the proceedings at all stages. He shall take full control of the proceedings, examine the parties and their witnesses to satisfy himself with respect to the matters at issue, and may allow the parties or their counsel to ask questions only for the purpose of clarifying points of law or fact involved in the case. The Corporate Hearing Panel (CHP) shall limit the presentation of evidence to matters relevant to the issue before him and necessary for a just and speedy disposition of the case.

The Corporate Hearing Panel (CHP) shall conduct a closed and confidential session. It shall have the authority to summon the concerned employee, witnesses, or resource person and to request production of evidence pertinent to the inquiry.

The following ground rules shall be observed:

- 1) The Chairperson of the Corporate Hearing Panel (CHP) shall preside over its sessions.
- 2) Every case shall be heard in one sitting, except in complex cases where it may set one or two issues for hearing from day to day until such hearing is terminated.
- 3) Witnesses may be excluded during the testimony of any party or other witness. The Presiding Officer shall exercise reasonable control over the order and number of witnesses to be heard.
- 4) All witnesses shall testify in person. All persons who are summoned to testify before the Corporate Hearing Panel (CHP) to shed light to the circumstances of the case must personally appear. Inexcusable failure on the part of any employee who, despite due notice, failed or refused to appear before the Corporate Hearing Panel (CHP) may be subjected to disciplinary action.
- 5) Copies of any document in support of the party's statement or any paper necessary in the disposition of the case which is in the possession of the party shall be provided by him upon the request of the Corporate Hearing Panel (CHP).
- 6) The strict rules of evidence shall not apply but the rules of courtesy and respect shall apply. This shall assure free-flowing examinations of all witnesses.
- 7) The Corporate Hearing Panel (CHP) shall, as far as practicable, position the parties, their counsels, and witnesses in such a manner that they are able to see each other, thus facilitating dialogue among them.
- 8) The parties and their witnesses shall simultaneously swear to the truth of the testimonies they will give during the adjudication hearing.
- 9) The Corporate Hearing Panel (CHP) shall hear the factual issues of the case in the order in which these have been drawn up during the pre-hearing conference. Two or more related issues may be heard together.
- 10) Unless the Corporate Hearing Panel (CHP) directs otherwise, the **order of hearing** may be as follows:

- i. The prosecution shall present its evidence;
- ii. The respondent shall present evidence in support of his/her defense;
- iii. There may be rebuttal of sur-rebuttal.

11) All **objections** raised during the hearing shall be resolved by the Presiding Officer. However, objections that cannot be ruled upon by the Panel shall be noted with the information that the same shall be included in the memorandum of the concerned party to be ruled upon by the Adjudication Committee.

The Corporate Hearing Panel (CHP) shall admit all evidence formally offered subject to the objection/s interposed against its admission.

12) Upon the conclusion of the presentation of witnesses and evidence, the parties shall **formally offer** their evidence either orally or in writing. Thereafter, both parties may be given time to submit their respective **memorandum** which in no case shall be beyond five (5) days after the termination of the investigation. Failure to submit the same within the given period shall be considered a waiver thereof.

13) All documentary evidence or exhibits shall be properly **marked** by letters (A, B, C, etc.), if presented by the complainant, and by numbers (1, 2, 3, etc.), if presented by the respondent. These shall form part of the complete records of the case.

14) Records of the proceedings during the formal investigation may be taken by shorthand, audiotape, video recording, or by any other means.

15) When the Corporate Hearing Panel (CHP) has already taken up all the factual issues in the case, the Presiding Officer may at his/her discretion allow each party to make a closing argument.

71.6 Disposition of the case. - The Corporate Hearing Panel (CHP) may, in the exercise of his sound discretion:

- a) dismiss the case for insufficient evidence or for lack of merit;
- b) find the respondent guilty of the act or omission complained of, and recommend appropriate sanctions;
- c) remand the case to the Corporate Investigation Unit for reinvestigation, and reconvene to continue the hearing;
- d) call for the presentation of oral arguments on an issue which, in the interest of justice and equity, is necessary for a fair resolution of the case; or
- e) archive the matter for good cause shown, in the judgment of the Panel. Good cause may include an actual or impending criminal indictment against the respondent.

71.7 Judgment of the Panel. –

71.7.1 By whom rendered. - The judgment shall be rendered by the members of the Panel who actually participated in the proceedings on the merits of the case.

71.7.2 Quorum and voting in the Panel. - The majority vote of the members, including the Chairperson, who actually participated in the proceedings on the merits of the case shall be necessary the pronouncement of a judgment or resolution.

The Chairperson and each member of the Panel shall be entitled to one (1) vote.

Voting by proxy or thru a representative shall not be valid.

71.7.3 Inhibition. - The Chairperson or any member of the Panel may abstain or voluntarily inhibit himself from voting on any matter submitted for decision whenever there are circumstances that tend to affect his impartiality.

71.8 Appearance of Advisor/Counsel. - The appearance of an advisor/counsel is optional. An advisor may be an attorney or any other adult person.

An advisor/counsel may attend the hearing and sit near his advisee/client during the hearing; communicate quietly with his advisee/client during the hearing; and may respond to a direct question from any member of the Corporate Hearing Panel (CHP). An advisor/counsel may not make an oral presentation at the hearing and may not submit a written request directly to the Panel, although an advisor/counsel may assist his advisee/client to prepare written submissions.

Any counsel who is a member of the Philippine Bar appearing before any hearing or investigation shall manifest orally or in writing, his appearance for either the respondent or the complainant, stating –

- a. his full name;
- b. Mailing address, which is not a post office box number;
- c. Telephone/cellular phone number and e-mail address, if available;
- d. Roll of Attorneys Number;
- e. IBP Official Receipt Number or IBP Lifetime Membership Number, including the date and place of issue;
- f. Current Professional Tax Receipt (PTR) Number, including the date and place of issue;
- g. Mandatory Continuing Legal Education (MCLE) Compliance or Exemption Certificate Number and the date of issue.

If the lawyer is a government employee, he/she shall be required to present an authority to practice profession which should come from the agency head or the agency head's authorized representative.

A non-lawyer who assists or accompanies a party shall show a special power of attorney authorizing such person to appear with such party. In case the party is out of the country and the advisor represents him, the special power of attorney must be authenticated by the consular office concerned and comply with other applicable formalities for their execution.

Any pleading or appearance of an advisor/counsel without complying with any of the above-stated requirements shall not be recognized.

71.9 Disruptive Behavior. - Disruptive behavior or discourtesy by any participant in the hearing is ground for expulsion from the hearing.

71.10 Witnesses. - Any member of the Corporate Hearing Panel (CHP) shall have the right to question any and all witnesses, to examine documentary evidence presented, and to call other witnesses. Witnesses shall not be present during the testimony of any party or other witness. The Presiding Officer shall exercise reasonable control over the order and number of witnesses to be heard.

71.11 Per diems. - All members of the Corporate Hearing Panel (CHP) who actually participated in the formal investigation shall be entitled to per diems.

ARTICLE 72. Filing of Pleadings. - All pleadings filed by the parties with the disciplining authority or his authorized representative shall be copy furnished the other party with proof of service. Any pleadings sent by registered mail shall be deemed filed on the date shown by the postmark on the envelope which shall be attached to the records of the case and in the case of personal delivery, the date stamped thereon by the disciplining office.

No pleadings shall be filed *via* e-mail, facsimile or any other electronic medium.

ARTICLE 73. The Corporate Hearing Panel (CHP) Report. - Within fifteen (15) days following the conclusion of the formal investigation, a report containing a narration of the findings of facts established during the investigation and hearings, the legal basis, as well as the recommendations of the Corporate Hearing Panel (CHP) shall be submitted to the Secretary of the Adjudication Committee. The complete record of the case shall be appended to the Report.

ARTICLE 74. *Elevation of the case to the Adjudication Committee.* –

74.1 Automatic Review of Resolution of the Corporate Hearing Panel (CHP). - Within ten (10) following the conclusion of the formal hearings before the Corporate Hearing Officer (CHP), the Formal Investigation Report and the record of the case shall be submitted to the Adjudication Committee for evaluation and review.

The Adjudication Committee may affirm, modify or reverse the findings and conclusions of the Corporate Hearing Panel.

74.2 Quorum; Votes Required. – A simple majority of all the members of the Adjudication Committee shall be necessary to constitute a quorum to deliberate on and decide any matter before it. Further, the vote or concurrence of a majority of the members constituting a quorum shall be necessary for the pronouncement of a decision, resolution, order or ruling.

The Chairperson and members of the Adjudication Committee shall each have one (1) vote.

Voting by proxy or thru a representative shall not be valid.

74.3 Abstention. - Any member may abstain from voting on any case/matter before the Committee on legal or justifiable grounds.

ARTICLE 75. *When Case is Decided.* – The Board of Directors shall render its decision on the case within thirty (30) days from receipt of the Report/Recommendation of the Adjudication Committee.

ARTICLE 76. *Finality of the Decision.* - A decision rendered by the Board of Directors whereby a corrective action of suspension of not more than thirty (30) days is imposed, shall be final and executory.

If the corrective action imposed is suspension exceeding thirty (30) days, demotion or dismissal, the same shall be final and executory after the lapse of the reglementary period for filing a motion for reconsideration or an appeal and no such motion or pleading has been filed.

ARTICLE 77. *Contents of the Decision.* - The Board of Directors may adopt the factual findings and legal reasons in the report submitted by the Adjudication Committee.

The decision shall include a brief statement of:

- a. the parties;
- b. the facts of the case;
- c. the issue/s involved;
- d. the applicable law or rules;
- e. the conclusions and reasons therefor;
- f. the relevant evidence, circumstances and factors that were considered as basis for either the exoneration or the imposition of the appropriate corrective action / penalty; and
- g. the approval by a majority of the members of the Board of Directors.

ARTICLE 78. *Service of Decision.* - Decisions of the Board of Directors shall be served by the Human Resource and Development Department (HRDD) either personally or by registered mail at respondent's place of assignment or at his last known address within three (3) days from rendition thereof.

In all cases, proof of such service shall be attached to the records for information and ready reference.

ARTICLE 79. *Motion for Reconsideration.* -

79.1 Filing deadline. - The party adversely affected by the decision may file a motion for reconsideration with the Board of Directors within fifteen (15) calendar days from receipt thereof.

No request for extension of the period within which to file a motion for reconsideration shall be allowed.

79.2 When deemed filed. - A motion for reconsideration sent by registered mail shall be deemed filed on the date shown by the postmark on the envelope which shall be attached to the records of the case. In case of personal delivery, it is deemed filed on the date stamped thereon by the proper office.

79.3 Procedure. - The following procedural sequence shall be followed:

1. Following receipt by the erring corporate employee of the decision of the Board of Directors, he may manifest his **intent to appeal** thru the form furnished by the HRDD.

2. Within fifteen (15) calendar days from the time the erring corporate employee was notified of the adverse decision, he shall file his **letter of request** (i.e. motion for reconsideration) with the office of the head / officer-in-charge of the Human Resource and Development Department (HRDD).

3. The HRDD shall -

a] transmit the appeal to the Adjudication Committee (AC), **AND**

b] certify that an appeal had been filed within the non-extendible period of fifteen (15) calendar days.

6. After deliberation on the merits of the appeal, the Adjudication Committee *en banc* shall resolve whether to grant or deny the appeal.

7. The resolution / recommendation of the Adjudication Committee *en banc* shall be forwarded to the Board of Directors for appropriate action.

79.4 Limitations. - The filing of a motion for reconsideration shall be limited exclusively to the following **grounds**:

1) Newly discovered evidence which materially affects the decision rendered;

2) The decision is not supported by the evidence on record; or

3) Errors of law or irregularities have been committed prejudicial to the interest of the movant.

Only one (1) motion for reconsideration shall be entertained. If a second motion for reconsideration is filed notwithstanding its prohibition under these Rules, the finality of action shall be reckoned from the denial of the first motion for reconsideration.

79.5 Effect of Filing. - The filing of a motion for reconsideration within the reglementary period of fifteen (15) days shall stay the execution the decision sought to be reconsidered.

ARTICLE 80. Appeal. - The following provisions shall govern appeals from a decision of the agency:

80.1 Filing. - Should the motion for reconsideration be denied, the respondent may appeal the matter to the Civil Service Commission (CSC) Proper within fifteen (15) days from receipt thereof.

An appeal shall not stop the decision of the head of agency from being immediately executory.

Where the penalty is suspension exceeding thirty (30) days or fine in an amount exceeding thirty (30) days' salary, demotion, or dismissal, the decision rendered by the head of agency is appealable to the Commission Proper within a period of fifteen (15) days from receipt thereof.

80.2 When deemed filed. - An appeal sent by registered mail shall be deemed filed on the date shown on the postmark on the envelope which shall be attached to the records of the case. In case of personal delivery, it is deemed filed on the date stamped thereon by the proper office.

80.3 Appeal fee. - The appellant shall pay an appeal fee and a copy of the official receipt thereof shall be attached to the appeal.

80.4 Perfection of an appeal. - To perfect an appeal, the appellant shall submit three (3) copies of the following documents:

- a) Appeal memorandum containing the grounds relied upon for the appeal, together with the certified true copy of the decision, resolution or order appealed from, and certified copies of the documents or evidence. The appeal memorandum shall be filed with the appellate authority, copy furnished the agency. The latter shall submit the records of the case, which shall be systematically and chronologically arranged, paged and securely bound to prevent loss, with its comment, within fifteen (15) days to the appellate authority.
- b) Proof of service of a copy of the appeal memorandum to the disciplining office;
- c) Proof of payment of the appeal fee; and
- d) A statement or certification of non-forum shopping.

When an appellant fails to comply with any of the above requirements within the reglementary period, the Commission shall direct compliance within a period of not more than ten (10) days from receipt thereof, with a warning that failure to comply shall be construed as failure to perfect an appeal and shall cause the dismissal of the appeal with prejudice to its refiling.

An appeal sent by mail shall be deemed filed on the date shown by the postmark on the envelope which shall be attached to the records of the case. In the case of personal delivery, the date stamped thereon by the proper office shall be the point of reference.

TITLE IV

RULES GOVERNING CASES COGNIZABLE BY THE BRANCH INFRACTION COMMITTEE

ARTICLE 81. *The Incident Report.* - Complaints relating to a **procedural deviation**, as defined and penalized under Book I of the PAGCOR Code of Discipline, may be initiated by –

- (a) the Head of the Department/Division/ Unit/Section concerned; or
- (b) the Surveillance/Security Division of the casino branch.

Thereupon, an Incident Report shall be prepared by the Head of the Department/Division/ Unit/Section concerned or his/her authorized representative, or by the Security/Surveillance Division. This Incident Report, which need not be under oath, shall be submitted to the Security Division for appropriate action.

ARTICLE 82. *Action on the Complaint.* - Upon receipt of the Incident Report, the Security Division shall evaluate the same. Thereupon, the Security Division shall cause the issuance of an **show-cause memorandum** upon the person/s complained of, attaching therewith a copy of the complaint and other supporting documents, and requiring the person/s complained of to submit a **Counter-Affidavit/ Comment under oath** within three (3) days from receipt of the order requiring his/her/their comment/s.

ARTICLE 83. *Preliminary Investigation.* -

83.1 Definition. - A preliminary investigation is a proceeding undertaken to determine whether a *prima facie* case exists to warrant the issuance of a formal charge. It involves a fact-finding investigation or an *ex parte* examination of records and documents submitted by the complainant and the person/s complained of, as well as documents readily available from other offices.

83.2 How conducted. - Within five (5) days from receipt of the complaint sufficient in form and substance, the person/s complained of shall be required to submit his/her/their counter-affidavit/comment. The latter's failure or refusal to submit the comment / counter-affidavit shall be considered a waiver thereof, and the preliminary investigation may be completed even without his/her comment / counter-affidavit.

If necessary, the parties, witnesses, if any, and resource persons may be summoned to a conference where the investigator may propound clarificatory and other relevant questions.

Upon receipt of the Counter-Affidavit or Comment under oath of the suspect, the Corporate Investigation Unit shall determine whether or not a *prima facie* case exists to warrant the issuance of a notice of charge/s.

83.3 Duration of the Investigation. - A preliminary investigation shall commence not later than five (5) days from receipt of the complaint by the disciplining authority and shall be terminated within twenty (20) days thereafter.

ARTICLE 84. Investigation Report. - Within five (5) days from the termination of the preliminary investigation, the Security Division shall submit the Investigation Report with recommendation and the complete records of the case to the General Manager of the branch.

ARTICLE 85. Resolution After the Preliminary Investigation. - If a *prima facie* case is established during the investigation, the General Manager of the branch may issue notice of charge/s pursuant to these Rules.

ARTICLE 86. Notice of Charge/s. - After a finding of a *prima facie* case, the General Manager of the branch may issue a **notice of charge/s** against the person complained of to which shall be attached copies of the complaint, sworn statement and other documents submitted.

The notice shall contain the following:

- i] the charges against the person complained of with a statement that a *prima facie* case exists;
- ii] an **Order to Explain** directing the respondent to answer the charge/s in writing, under oath in not less than seventy-two (72) hours from receipt thereof;
- iii] An advice for the respondent to indicate in his/her answer whether or not he elects a formal investigation of the charge/s; and
- iv] a notice that he/she may opt to be assisted by a counsel of his/her choice.

ARTICLE 87. Prohibited Pleadings. - No requests for clarification, bills of particulars, motion to dismiss, motion to quash or motion for reconsideration shall be entertained. If any of these pleadings or motions are interposed by the respondent, the same shall be considered as an answer and shall be evaluated as such.

ARTICLE 88. Answer. - The answer, which may either be a specific denial or an affirmation of the allegations in the complaint, shall be in writing, under oath, and must contain 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 include a statement indicating whether or not the respondent elects a formal investigation.

ARTICLE 89. Failure to File Answer. - If the respondent fails or refuses to submit his/her answer to the notice of charge/s within the period provided in the notice of charge/s which shall not be less than three (3) days from receipt thereof, he/she shall be considered to have waived his right to submit the same, and the case may be decided based on available records.

ARTICLE 90. Conduct of Formal Investigation. - A formal investigation shall be conducted by the Branch Infraction Committee (BIC) where the merits of the case cannot be decided judiciously without conducting such investigation or when the respondent elects to have one, in which case, the investigation shall be held by the **BIC** not earlier than five (5) days nor later than ten (10) days from receipt of the respondent's

answer or upon the expiration of the period to answer. Said investigation shall be finished within thirty (30) days from the issuance of the notice of charge/s.

ARTICLE 91. *Submission of Position Paper / Memorandum.* - At any stage of the proceedings, the parties may, based on their mutual consent, submit position paper/memorandum and submit the case for resolution without any need for further hearings.

ARTICLE 92. *Pre-Hearing Conference.* - At the commencement of the formal investigation, the Branch Infraction Committee (BIC) shall conduct a Pre-Hearing Conference for the parties to appear, consider and agree on any of the following:

- a. Stipulation of facts;
- b. Simplification of issues;
- c. Identification and marking of evidence of the parties;
- d. Waiver of objections to admissibility of evidence;
- e. Limiting the number of witnesses, and their names;
- f. Dates of subsequent hearings; and
- g. Such other matters as may aid in the prompt and just resolution of the case.

The agreement entered into during the pre-hearing conference is binding on both parties unless in the interest of justice, the Branch Infraction Committee (BIC) may allow a deviation from the same.

The conduct of a pre-hearing conference is mandatory. The failure of the respondent to attend the pre-hearing conference constitutes a waiver to participate in the pre-hearing conference but may still participate in the formal investigation upon appropriate motion.

ARTICLE 93. *Proceedings before the Branch Infraction Committee (BIC).* -

93.1 Powers of the Branch Infraction Committee. - The Branch Infraction Committee (BIC) shall have the following powers:

- a. To conduct the formal investigation of cases relative to procedural deviations allegedly committed by rank-and-file employees of the casino branches and satellite casinos;
- b. To administer oath on all matters or proceedings related to the performance of its duties;
- c. To compel the attendance of witnesses and require the production of documents or things;
- f. To impose penalties for violation of these rules; and
- g. To perform such other powers which the Branch Infraction Committee (BIC) deems necessary for the fair and speedy resolution of the case.

93.2 Composition of the Branch Infraction Committee. - The Chairperson/s and members of the Branch Infraction Committee shall be appointed by the Board of Directors.

A. The Branch Infraction Committee shall be composed of the following:

1) Co-chairperson/s shall include the following:

- (a) Casino Shift Manager (PC 11); and
- (b) Assistant Branch Manager (PC 10).

2) Voting members shall be composed of the following:

- (a) Pit Supervisor (PC 8);
- (b) Assistant Slot Machine Head (PC 8);
- (c) Treasury Officer (PC 8);
- (d) Assistant Chief Security Officer (PC 7);
- (e) Assistant Branch Surveillance Officer (PC 7); and
- (f) One (1) representative from the Administrative Division.

3) Non-voting member shall include the following:

(a) Operations Assistant (Operations Division).

93.3 The Secretary of the BIC. - The Operations Assistant (OA) shall act as the Secretary of the Branch Infraction Committee (BIC).

The Secretary shall perform the following duties and responsibilities:

- 1) keep in his/her care and custody the record of the case, together with all the books necessary for the documentation of the proceedings, files and exhibits;
- 2) serve parties and witnesses notices of hearings, meetings or conferences;
- 3) prepare calendars, agenda and minutes of sessions;
- 4) distributes agenda (i.e. in a sealed envelope) to the members at least one (1) day before the scheduled session;
- 5) monitors deferred cases;
- 6) presents to the Committee the infraction and the facts of the case;
- 7) interpellates and clarifies material matters brought forth during the hearing / session;
- 8) perform such other functions as may be directed by the Chairperson/s.

ARTICLE 94. Waiver of Right to a Formal Hearing. - When the right to a formal hearing is waived by the respondent, a resolution may forthwith be rendered on the pleadings and other evidence on hand, provided that the same are sufficiently substantial to support a resolution or conclusion. Accordingly, the Security Division (SD) shall forward the records and the evidence to the Branch Infraction Committee (BIC) for appropriate action.

If, upon the determination of the Branch Infraction Committee (BIC), no such decision or conclusion could be attained on the basis of the evidence on hand, then an *ex parte* hearing on the merits of the case shall be conducted by the Panel.

ARTICLE 95. Conduct of Formal Investigation. - - A formal investigation shall be conducted by the disciplining authority where the merits of the case cannot be decided judiciously without conducting such investigation or when the respondent elects to have one, in which case, the investigation shall be held by the **Branch Infraction Committee (BIC)** not earlier than five (5) days nor later than ten (10) days from receipt of the respondent's answer or upon the expiration of the period to answer. Said investigation shall be finished within thirty (30) days from the issuance of the formal charge unless the period is extended by the disciplining authority in meritorious cases.

Investigators from the Security Division (SD) shall act as the prosecutorial arm of the agency during the formal hearings.

ARTICLE 96. Submission of Position Paper / Memorandum. - At any stage of the proceedings, the parties may, based on their mutual consent, submit position paper/memorandum and submit the case for resolution without any need for further hearings.

ARTICLE 97. The Formal Hearing. –

97.1 Continuous Hearings Until Terminated. - Hearings shall be conducted on the hearing dates set by the Branch Infraction Committee or as agreed upon by the during the Pre-Hearing Conference.

Each party may be granted one (1) postponement upon oral or written request.

If the respondent fails or refuses to appear or is not represented by counsel during the scheduled hearings despite due notice, the investigation shall proceed and the respondent shall be deemed to have waived his/her right to present evidence in his/her favor during the said hearing.

97.2 Preliminary Matters. - At the start of the hearing, the Branch Infraction Committee shall note the appearances of the parties and shall proceed with the reception of evidence for the complainant.

If, after being apprised of the right to counsel, the respondent appears without the aid of a counsel, he/she shall be deemed to have waived his/her right thereto.

Before taking the testimony of a witness, the Branch Infraction Committee shall place him/her under oath and then take his/her name, address, civil status, age and complete name and address of employment.

A sworn statement of the witness/es properly identified and affirmed shall constitute direct testimony, copy furnished the other party.

Clarificatory questions may also be asked.

97.3 Nature of Proceedings. - The proceedings before the Branch Infraction Committee shall be non-litigious and summary in nature. The trial-type hearing practiced in courts shall not be used. The rules of procedure and evidence prevailing in courts of law and equity shall not be controlling and the Branch Infraction Committee may avail of all reasonable means to ascertain the truth and to resolve the case in a fair and expeditious manner.

97.4 Hearing Dates. - The schedule of hearings shall be followed strictly without further notice. Only one (1) postponement shall be granted upon a request actually received by the Secretary of the Branch Infraction Committee (BIC) three (3) calendar days before the scheduled hearing.

If the respondent fails or refuses to appear during the scheduled hearing despite due notice, the investigation shall proceed *ex parte* and the respondent shall be deemed to have waived his right to be present and to submit evidence for his defense.

97.5 The Hearing Proper. - The Presiding Officer of the Branch Infraction Committee (BIC) shall exercise complete control of the proceedings at all stages. It shall take full control of the proceedings, examine the parties and their witnesses to satisfy himself with respect to the matters at issue, and may allow the parties or their counsel to ask questions only for the purpose of clarifying points of law or fact involved in the case. The Branch Infraction Committee shall limit the presentation of evidence to matters relevant to the issue before him and necessary for a just and speedy disposition of the case.

The Branch Infraction Committee (BIC) shall conduct a closed and confidential session. It shall have the authority to summon the concerned employee, witnesses, or resource person and to request production of evidence pertinent to the inquiry.

The following ground rules shall be observed:

- 1) The Chairperson shall preside over its sessions.
- 2) Every case shall be heard in one sitting, except in complex cases where it may set one or two issues for hearing from day to day until such hearing is terminated.
- 3) Witnesses may shall be excluded during the testimony of any party or other witness. The Presiding Officer shall exercise reasonable control over the order and number of witnesses to be heard.
- 4) All witnesses shall testify in person. All persons who are summoned to testify before the Branch Infraction Committee (BIC) to shed light to the circumstances of the case must personally appear. Inexcusable failure on the part of any employee who, despite due notice, failed or refused to appear before the BIC may be subjected to disciplinary action.
- 5) Copies of any document in support of the party's statement or any paper necessary in the disposition of the case which is in the possession of the party shall be provided by him upon the request of the Committee.
- 6) The strict rules of evidence shall not apply but the rules of courtesy and respect shall apply. This shall assure free-flowing examinations of all witnesses.
- 7) The BIC shall, as far as practicable, position the parties, their counsels, and witnesses in such a manner that they are able to see each other, thus facilitating dialogue among them.
- 8) The parties and their witnesses shall simultaneously swear to the truth of the testimonies they will give during the adjudication hearing.
- 9) The Branch Infraction Committee (BIC) shall hear the factual issues of the case in the order in which these have been drawn up during the pre-hearing conference. Two or more related issues may be heard together.

- 10) Unless the BIC directs otherwise, the **order of hearing** may be as follows:
- i. The prosecution shall present its evidence;
 - ii. The respondent shall present evidence in support of his/her defense;
 - iii. There may be rebuttal of sur-rebuttal.

11) All **objections** raised during the hearing shall be resolved by the Presiding Officer. However, objections that cannot be ruled upon by the Committee shall be noted with the information that the same shall be included in the memorandum of the concerned party to be ruled upon by the Committee.

The Committee shall admit all evidence formally offered subject to the objection/s interposed against its admission.

12) Upon the conclusion of the presentation of witnesses and evidence, the parties shall **formally offer** their evidence either orally or in writing. Thereafter, both parties may be given time to submit their respective memorandum which in no case shall be beyond five (5) days after the termination of the investigation. Failure to submit the same within the given period shall be considered a waiver thereof.

13) All documentary evidence or exhibits shall be properly **marked** by letters (A, B, C, etc.), if presented by the complainant, and by numbers (1, 2, 3, etc.), if presented by the respondent. These shall form part of the complete records of the case.

14) Records of the proceedings during the formal investigation may be taken by shorthand, audiotape, video recording, or by any other means.

15) When the Committee has already taken up all the factual issues in the case, the Presiding Officer may at his discretion allow each party to make a closing argument.

97.6 Disposition of the case. - The Branch Infraction Committee may, in the exercise of its sound discretion:

- a. Dismiss the case for insufficient evidence or for lack of merit;
- b. Find the respondent guilty of the act or omission complained of, and recommend appropriate sanctions;
- c. Remand the case to the Security Division for reinvestigation, and reconvene to continue the hearing;
- d. Call for the presentation of oral arguments on an issue which, in the interest of justice and equity, is necessary for a fair resolution of the case; or
- e. Archive the matter for good cause shown, in the judgment of the Committee.

97.7 Appearance of Advisor/Counsel. - The appearance of an advisor/counsel is optional. An advisor may be an attorney or any other adult person.

An advisor/counsel may attend the hearing and sit near his advisee/client during the hearing; communicate quietly with his advisee/client during the hearing; and may respond to a direct question from the Hearing Officer. An advisor/counsel may not make an oral presentation at the hearing and may not submit a written request directly to the Committee, although an advisor/counsel may assist his advisee/client to prepare written submissions.

Any counsel who is a member of the Philippine Bar appearing before any hearing or investigation shall manifest orally or in writing, his appearance for either the respondent or the complainant, stating –

- a. his full name;
- b. Mailing address, which is not a post office box number;
- c. Telephone/cellular phone number and e-mail address, if available;

- d. Roll of Attorneys Number;
- e. IBP Official Receipt Number or IBP Lifetime Membership Number, including the date and place of issue;
- f. Current Professional Tax Receipt (PTR) Number, including the date and place of issue;
- g. Mandatory Continuing Legal Education (MCLE) Compliance or Exemption Certificate Number and the date of issue.

If the lawyer is a government employee, he/she shall be required to present an authority to practice profession which should come from the agency head or the agency head's authorized representative.

A non-lawyer who assists or accompanies a party shall show a special power of attorney authorizing such person to appear with such party. In case the party is out of the country and the advisor represents him, the special power of attorney must be authenticated by the consular office concerned and comply with other applicable formalities for their execution.

Any pleading or appearance of an advisor/counsel without complying with any of the above-stated requirements shall not be recognized.

97.8 Disruptive Behavior. - Disruptive behavior or discourtesy by any participant in the hearing is ground for expulsion from the hearing.

97.9 Witnesses. - Any member of the Branch Infraction Committee (BIC) shall have the right to question any and all witnesses, to examine documentary evidence presented, and to call other witnesses. Witnesses shall not be present during the testimony of any party or other witness. The Committee shall exercise reasonable control over the order and number of witnesses to be heard.

97.10 Per diems. - The Chairperson and members of the Branch Infraction Committee (BIC) who actually participated in the formal investigation shall be entitled to per diems for every hearing day.

ARTICLE 98. Filing of Pleadings. - All pleadings filed by the parties with the disciplining authority or his authorized representative shall be copy furnished the other party with proof of service. Any pleadings sent by registered mail shall be deemed filed on the date shown by the postmark on the envelope which shall be attached to the records of the case and in the case of personal delivery, the date stamped thereon by the disciplining office.

No pleadings shall be filed *via* e-mail, facsimile or any other electronic medium.

ARTICLE 99. Formal Investigation Report. - Within fifteen (15) days after the conclusion of the formal investigation, a report containing a narration of the material facts established during the investigation and hearings, the findings and the evidence supporting said findings, as well as the recommendations, shall be submitted by the Branch Infraction Committee to the Branch Management Panel (BMP). The complete record of the case shall be attached to the Formal Investigation Report.

ARTICLE 100. Elevation of BIC Report to the Branch Management Panel (BMP). - The Report / Recommendation of the Branch Infraction Committee (BIC), including the record of the case, shall be forwarded to the Branch Management Panel (BMP) for evaluation and review.

ARTICLE 101. Automatic Review by the Adjudication Committee. -

101.1 Automatic Review of the Resolution of the Branch Management Panel (BMP). - The resolution of the Branch Management Panel (BMP) with respect to the report/recommendation of the Branch Infraction Committee (BIC) shall be submitted to the Adjudication Committee for automatic review.

The Adjudication Committee may affirm, modify or reverse the findings and conclusions of the Branch Infraction Committee (BIC), as well as the resolution of the Branch Management Panel (BMP).

101.2 Quorum; Votes Required. - A simple majority of all the members of the Adjudication Committee shall be necessary to constitute a quorum to deliberate on and decide any matter before it.

Further, the vote or concurrence of a majority of the members constituting a quorum shall be necessary for the pronouncement of a decision, resolution, order or ruling.

The Chairperson and members of the Adjudication Committee shall each have one (1) vote.

Voting by proxy or thru a representative shall not be valid.

101.3 Abstention. - Any member may abstain from voting on any case/matter before the Committee on legal or justifiable grounds.

ARTICLE 102. *When Case is Decided.* - The Board of Directors shall render its decision on the case within thirty (30) days from receipt of the report of the Adjudication Committee.

ARTICLE 103. *Finality of the Decision.* - A decision rendered by the Board of Directors whereby a corrective action of suspension of not more than thirty (30) days is imposed, shall be final and executory.

If the corrective action imposed is suspension exceeding thirty (30) days, demotion or dismissal, the same shall be final and executory after the lapse of the reglementary period for filing a motion for reconsideration or an appeal and no such motion or pleading has been filed.

ARTICLE 104. *Contents of the Decision.* - The Board of Directors may adopt the factual findings and legal reasons in the report submitted by the Adjudication Committee.

The decision shall include a brief statement of:

- a) the parties;
- b) the facts of the case;
- c) the issue/s involved;
- d) the applicable law or rules;
- e) the conclusions and reasons therefor;
- f) the relevant evidence, circumstances and factors that were considered as basis for either the exoneration or the imposition of the appropriate corrective action / penalty; and
- g) the approval by a majority of the members of the Board of Directors.

ARTICLE 105. *Service of Decision.* - Decisions of the Board of Directors shall be served by the Human Resource and Development Department (HRDD) either personally or by registered mail at respondent's place of assignment or at his last known address within three (3) days from rendition thereof.

In all cases, proof of such service shall be attached to the records for information and ready reference.

ARTICLE 106. *Motion for Reconsideration.* -

106.1 Filing deadline. - The party adversely affected by the decision may file a motion for reconsideration with the Board of Directors within fifteen (15) calendar days from receipt thereof.

No request for extension of the period within which to file a motion for reconsideration shall be allowed.

106.2 When deemed filed. - A motion for reconsideration sent by registered mail shall be deemed filed on the date shown by the postmark on the envelope which shall be attached to the records of the case. In case of personal delivery, it is deemed filed on the date stamped thereon by the proper office.

106.3 Procedure. - The following procedural sequence shall be followed:

1. Following receipt by the erring corporate employee of the decision of the Board of Directors, he may manifest his **intent to appeal** thru the form furnished by the HRDD.

2. Within fifteen (15) calendar days from the time the erring corporate employee was notified of the adverse decision, he shall file his **letter of request** (i.e. motion for reconsideration) with the office of the head / officer-in-charge of the Human Resource and Development Department (HRDD).

3. The HRDD shall –

a] transmit the appeal to the Adjudication Committee (AC), **AND**

b] certify that an appeal had been filed within the non-extendible period of fifteen (15) calendar days.

4. After deliberation on the merits of the appeal, the Adjudication Committee *en banc* shall resolve whether to grant or deny the appeal.

5. The resolution / recommendation of the Adjudication Committee *en banc* shall be forwarded to the Board of Directors for appropriate action.

106.4 Limitations. - The filing of a motion for reconsideration shall be limited exclusively to the following **grounds**:

- 1) Newly discovered evidence which materially affects the decision rendered;
- 2) The decision is not supported by the evidence on record; or
- 3) Errors of law or irregularities have been committed prejudicial to the interest of the movant.

Only one (1) motion for reconsideration shall be entertained. If a second motion for reconsideration is filed notwithstanding its prohibition under these Rules, the finality of action shall be reckoned from the denial of the first motion for reconsideration.

106.5 Effect of Filing. - The filing of a motion for reconsideration within the reglementary period of fifteen (15) days shall stay the execution the decision sought to be reconsidered.

ARTICLE 107. Appeal. – The following provisions shall govern an appeal from a decision of the agency.

107.1 Filing. - Should the motion for reconsideration be denied, the respondent may appeal the matter to the Civil Service Commission (CSC) Proper within fifteen (15) days from receipt thereof.

An appeal shall not stop the decision of the head of agency from being immediately executory.

Where the penalty is suspension exceeding thirty (30) days or fine in an amount exceeding thirty (30) days' salary, demotion, or dismissal, the decision rendered by the head of agency is appealable to the Commission Proper within a period of fifteen (15) days from receipt thereof.

107.2 When deemed filed. - An appeal sent by registered mail shall be deemed filed on the date shown on the postmark on the envelope which shall be attached to the records of the case. In case of personal delivery, it is deemed filed on the date stamped thereon by the proper office.

107.3 Appeal fee. - The appellant shall pay an appeal fee and a copy of the official receipt thereof shall be attached to the appeal.

107.4 Perfection of an appeal. - To perfect an appeal, the appellant shall submit three (3) copies of the following documents:

- a) Appeal memorandum containing the grounds relied upon for the appeal, together with the certified true copy of the decision, resolution or order appealed from, and certified copies of the documents or evidence. The appeal memorandum shall be filed with the appellate authority, copy furnished the agency. The latter shall submit the records of the case, which shall be systematically and chronologically arranged, paged and securely bound to prevent loss, with its comment, within fifteen (15) days to the appellate authority.

- b) Proof of service of a copy of the appeal memorandum to the disciplining office;
- c) Proof of payment of the appeal fee; and
- d) A statement or certification of non-forum shopping.

When an appellant fails to comply with any of the above requirements within the reglementary period, the Commission shall direct compliance within a period of not more than ten (10) days from receipt thereof, with a warning that failure to comply shall be construed as failure to perfect an appeal and shall cause the dismissal of the appeal with prejudice to its refiling.

An appeal sent by mail shall be deemed filed on the date shown by the postmark on the envelope which shall be attached to the records of the case. In the case of personal delivery, the date stamped thereon by the proper office shall be the point of reference.

TITLE V

RULES GOVERNING CASES COGNIZABLE BY THE BRANCH MANAGEMENT PANEL

ARTICLE 108. Coverage. - Subject to the provisions with respect to cases cognizable by the Corporate Investigation Unit (CIU), these rules shall govern administrative investigations and proceedings concerning offenses allegedly committed by a rank-and-file employee, whether probationary, contractual, casual, regular, or confidential, in any of the casino branches, satellite casinos, arcades, bingo venues, poker clubs and similar establishments.

ARTICLE 109. Exclusions. - The following cases shall be excluded from the application of the rules hereunder:

- a. A case wherein a rank-and-file employee allegedly cooperated, conspired or benefited from a malfeasance/misfeasance or nonfeasance committed by an officer of the agency. In this regard, such case shall be referred to the Corporate Investigation Unit (CIU-CLSD);
- b. A case involving rank-and-file employees of the Corporate offices of the PAGCOR;
- c. A case within the sphere of competence of the Human Resource and Development Department (HRDD), such as but not limited to the following:
 - (1) Unauthorized absence;
 - (2) Habitual absenteeism;
 - (3) Habitual tardiness;
 - (4) Excessive breaktime;
 - (5) Violation of rules on attendance and leave;
 - (6) Attendance fraud; and
 - (7) Violation of rules on proper notification of absence.

ARTICLE 110. The Complaint or the Incident Report. - A complaint relating to an offense defined under the PAGCOR Code of Discipline, may be initiated by –

- (a) the Head of the Department / Unit concerned;
- (b) the Head of the Surveillance/Security Division; or
- (b) any person whose right or interest has been prejudiced by an act or omission allegedly committed by an erring employee. In this case, the complaint must be in writing and under oath.

Where the complaint is initiated by the Head of the Department / Unit to which the erring employee is assigned / detailed, an Incident Report shall be prepared by the Head of the Department / Unit. This Incident Report need not be under oath.

The complaint or Incident Report shall be submitted to the Security Department (SD) for the preliminary investigation.

No anonymous complaint shall be entertained unless there is obvious truth or merit to the allegations therein or supported by documentary or direct evidence, in which case the person complained of may be required to comment.

The complaint in triplicate copies shall be written in a clear, simple and concise language and in a systematic manner as to apprise the person complained of, of the nature and cause of the accusation against him/her and to enable him/her to intelligently prepare his/her defense or answer/comment. However, should there be more than one (1) person complained of, the complainant is required to submit additional copies corresponding to the number of persons complained of.

The complaint shall contain the following:

- (a) full name and address of the complainant;
- (b) full name and address of the person/s complained of as well as his/her/their position/s and office/s;
- (c) a narration of the relevant and material facts which shows the acts or omissions allegedly committed;
- (d) certified true copies of documentary evidence and affidavits of his/her witnesses, if any; and
- (e) certification of non-forum shopping.

In the absence of any one of the aforementioned requirements may cause the dismissal of the complaint without prejudice to its refiling upon compliance with the above requirements.

The Complaint/Disclosure Form (**Annex "H"**) shall be attached to the verified complaint.

ARTICLE 111. *Withdrawal of the Complaint.* - The withdrawal of the complaint or the execution of an affidavit of desistance by the complainant does not result in the termination of the agency investigation into the allegations nor discharge the person complained of from administrative liability. Where there is obvious truth or merit to the allegations in the complaint or where there is documentary evidence that would tend to prove the guilt of the person complained of, the same should be given due course.

ARTICLE 112. *Action on the Complaint.* - Upon receipt of a complaint which is sufficient in form and substance, the disciplining authority thru the Security Division shall issue a **show-cause memorandum** upon the person complained of, attaching therewith a copy of the complaint and other supporting documents, and requiring the person complained of to submit a **Counter-Affidavit / Comment under oath** within three (3) days from receipt of the order requiring his/her/their comment/s.

On the basis of the report of any incident, anomaly or irregularity, the Security Division may *motu proprio*, initiate the filing of a complaint against the allegedly erring employee after conducting an initial inquiry.

ARTICLE 113. *Preliminary Investigation.* -

113.1 Definition. - A preliminary investigation is a proceeding undertaken to determine whether a *prima facie* case exists to warrant the issuance of a formal charge. It involves a fact-finding investigation or an *ex parte* examination of records and documents submitted by the complainant and the person/s complained of, as well as documents readily available from other offices.

113.2 How conducted. - Within five (5) days from receipt of the complaint sufficient in form and substance, the person/s complained of shall be required to submit his/her/their counter-affidavit/comment. Where the complaint is initiated by the disciplining authority, General Manager of the branch, or the Head of a Division / Section, the Security Division (SD) shall issue a **show-cause**

memorandum directing the person/s complained of to explain why no administrative case should be filed against him/her/them. The latter's failure or refusal to submit the comment / counter-affidavit shall be considered a waiver thereof, and the preliminary investigation may be completed even without his/her comment / counter-affidavit.

If necessary, the parties, witnesses, if any, the parties may be summoned to a conference where the investigator may propound clarificatory and other relevant questions.

Upon receipt of the Counter-Affidavit / Comment under oath of the suspect, the Security Division (SD) shall determine whether or not a *prima facie* case exists to warrant the issuance of a formal charge.

113.3 Duration of the Investigation. - A preliminary investigation shall commence not later than five (5) days from receipt of the complaint by the disciplining authority and shall be terminated within twenty (20) days thereafter.

ARTICLE 114. Investigation Report. - Within five (5) days from the termination of the preliminary investigation, the Security Division (SD) shall submit the Investigation Report with recommendation and the complete records of the case to the disciplining authority.

ARTICLE 115. Resolution After the Preliminary Investigation. - If a *prima facie* case is established during the investigation, the Chairman/President may issue either a formal charge or a notice of charge/s pursuant to these Rules.

In the absence of a *prima facie* case, the complaint shall be dismissed.

ARTICLE 116. Formal Charge and Notice to Explain. - After a finding of a *prima facie* case, the Chairman/President shall formally charge the person complained of, who shall now be called as respondent.

Pursuant to the power vested upon him by the Board of Directors, the Chairman/President of the agency, upon the recommendation of the Head of the Security Department and the Chief Security Officer (CSO) of the branch, shall order the issuance of the formal charge to the respondent. Service of the formal charge shall be done by the proper Security Division.

The **Formal Charge** shall state the following:

- i] specification of charge/s, as defined under the PAGCOR Code of Discipline;
- ii] a brief statement of material or relevant facts which must answer the following questions:
 - a] Who committed the alleged offense?
 - b] What actually happened?
 - c] When / Where / How did it happen?
 - d] Witnesses, if any?
- iii] certified true copies of documentary evidence, if any;
- iv] sworn statements covering the testimony of witnesses;
- v] an **Order to Explain** directing the respondent to answer the charge/s in writing, under oath within seventy-two (72) hours from receipt thereof;
- vi] an advice for the respondent to indicate in his/her answer whether or not he elects a formal investigation of the charge/s; and
- vii] a notice that he/she may opt to be assisted by a counsel (i.e. lawyer) of his/her choice. However, he (i.e. respondent) must personally appear during the hearing. Counsel shall not be entertained unless the respondent himself is present, and respondent's absence shall be deemed a waiver of his right thereto.

If the respondent has submitted his comment and counter-affidavits during the preliminary investigation, he shall be given the opportunity to submit additional evidence.

ARTICLE 117. Notice of Charge/s. - In instances where the complaint was initiated by a person other than the disciplining authority, the Chairman/President of the agency may issue a notice of charge/s against the person complained of to which shall be attached copies of the complaint, sworn statement and other documents submitted. Service of said notice of charges shall be made by the Security Division.

When, on the basis of a security personnel's personal knowledge of facts and circumstances, it has been established that an officer of the agency who was apprehended by security personnel, has committed, is actually committing, or is attempting to commit an offense, whether acting alone or in concert with a co-employee or a private individual, notice of charge/s may be issued by the Chairman of the agency and served upon the offender by the Security Division.

The notice shall contain the following:

- i] charges against the person complained of with a statement that a *prima facie* case exists;
- ii] an **Order to Explain** directing the respondent to answer the charge/s in writing, under oath in not less than seventy-two (72) hours from receipt thereof; and
- iii] an advice for the respondent to indicate in his/her answer whether or not he elects a formal investigation of the charge/s; and
- iv] a notice that he/she may opt to be assisted by a counsel of his/her choice.

ARTICLE 118. Prohibited Pleadings. - No requests for clarification, bills of particulars, motion to dismiss, motion to quash or motion for reconsideration shall be entertained. If any of these pleadings or motions are interposed by the respondent, the same shall be considered as an answer and shall be evaluated as such.

ARTICLE 119. Answer. - The answer, which may either be a specific denial or an affirmation of the allegations in the complaint, shall be in writing, under oath, and must contain 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 include a statement indicating whether or not the respondent elects a formal investigation.

ARTICLE 120. Failure to File Answer. - If the respondent fails or refuses to submit his/her answer to the formal charge or notice of charge/s within the period provided in the formal charge or notice of charge/s which shall not be less than three (3) days from receipt thereof, he/she shall be considered to have waived his right to submit the same, and the case may be decided based on available records.

ARTICLE 121. Preventive suspension. -

121.1 Nature of preventive suspension. - Preventive suspension pending investigation is not a corrective action / penalty. It is designed merely as a measure of precaution so that the official or employee charged may be removed from the scene of his/her alleged misfeasance/malffeasance/nonfeasance while the same is being investigated. Preventive suspension is separate and distinct from disciplinary suspension.

The period wherein the respondent was under preventive suspension, which shall not exceed ninety (90) days, shall not be deducted from the period of disciplinary suspension meted upon him.

121.2 Duration of Preventive Suspension. - The Chairman/President may place the respondent under preventive suspension for a maximum period of ninety (90) days. When the administrative case against an officer or employee under preventive suspension is not finally decided by the disciplining authority within ninety (90) days from the date of issuance of the order to that effect, he/she shall be automatically reinstated in the service; **Provided** that, when the delay in the disposition of the case which is due to the fault, negligence or petition of the respondent, the period of delay shall not be included in the counting of the ninety (90) calendar days of preventive suspension. Any period of delay caused by motions filed by the respondent shall be added to the period of preventive suspension; **Provided further**, that where the order of preventive suspension is for a period less than the maximum period, the disciplining authority undertakes to finish the formal investigation within the said period and is precluded from imposing another preventive suspension, the ; **Provided**

furthermore that, should the respondent be on authorized leave, said preventive suspension shall be deferred or interrupted until such time that said leave has been fully exhausted.

121.3. Requirements for Imposition of Preventive Suspension. – Upon petition of the complainant or *motu proprio*, the proper disciplining authority may issue an order of preventive suspension if **ALL** the following requirements concur:

1) An order of preventive suspension shall be issued by the Chairman/President of the agency upon the recommendation of the General Manager of the branch. Such order shall be subject to approval by the Board of Directors.

2) The purpose for the issuance of an order of preventive suspension pending investigation is to temporarily remove the respondent from the scene of his/her misfeasance, malfeasance or nonfeasance to preclude the possibility of:

- a] exerting undue influence or pressure on the witnesses against him/her; or
- b] tampering with evidence that may be used against him/her.

In lieu of preventive suspension, for the same purpose, the head of agency may reassign the respondent to another unit of the agency during the formal hearings.

e) The formal charge, including the particulars or reason therefor, must have been served upon the respondent.

f) The formal charge involves:

- a] Serious dishonesty;
- b] Oppression;
- c] Grave misconduct;
- d] Gross neglect of duty;
- e] Administrative offenses which are punishable by dismissal from the service on its second or third offense; or
- f] If there are reasons to believe that the respondent is probably guilty of the charge/s which would warrant his/her dismissal from the service.

121.4 No back salaries during Preventive Suspension. - No back salaries shall be awarded to the respondent during the period he was placed under **preventive suspension pending investigation**.

ARTICLE 122. – Remedies from the Order of Preventive Suspension. - The respondent may file an appeal to the Civil Service Commission within fifteen (15) days from receipt thereof. Pending appeal, the same shall be executory. A motion for reconsideration from the order of preventive suspension shall not be allowed.

ARTICLE 123. Payment of Back Salaries During Preventive Suspension. - The payment of back salaries during the period of preventive suspension shall be governed by the following:

a. A declaration by the Civil Service Commission that an order of preventive suspension is null and void on its face entitles the respondent official or employee to immediate reinstatement and payment of back salaries corresponding to the period of the unlawful preventive suspension without awaiting the outcome of the main case.

The phrase “**null and void on its face**” in relation to a preventive suspension order, imports any of the following circumstances:

- i) The order was issued by one who is not authorized by law;
- v) The order failed to satisfy the mandatory requirements for the imposition of an order of preventive suspension;
- vi) The order of preventive suspension was issued without a formal charge or notice of charges;
- vii) While lawful in the sense that it is based on the enumerated grounds, the duration of the imposed preventive suspension has exceeded the prescribed periods, in which case the payment of back salaries shall correspond to the excess period only.

b. A declaration of invalidity of a preventive suspension order not based on any of the reasons enumerated, shall result in the reinstatement of the official or employee concerned. The payment of back salaries shall, however, await the final outcome of the principal case. If the official or employee is fully exonerated of the charge/s or when the penalty imposed in the principal case is reprimand, he or she shall be paid such back salaries. Otherwise, no back salaries shall be awarded.

The phrase “**full exoneration**” contemplates a finding of not guilty for the offense/s charged. The following shall not be construed as “*full exoneration*” within the contemplation of these guidelines:

- a. Downgrading of the charge to a lesser offense;
- b. Reinstatement by reason of a commutation of the penalty;
- c. Being found guilty of a lesser offense; or
- d. Dismissal of the case for reasons other than a finding of guilt against the respondent.

Even if the respondent official or employee is eventually found innocent of the charge/s proffered against him/her, the same shall not give rise to payment of back salaries corresponding to the period of preventive suspension in the absence of any finding of its illegality.

ARTICLE 124. Waiver of Right to a Formal Hearing. - When the right to a formal hearing is waived by the respondent, a resolution may forthwith be rendered on the pleadings and other evidence on hand, provided that the same are sufficiently substantial to support a resolution or conclusion. Accordingly, the Security Division (SD) shall forward the records and the evidence to the Branch Management Panel (BMP) for appropriate action.

If, upon the determination of the Branch Management Panel (BMP), no such decision or conclusion could be attained on the basis of the evidence on hand, then an *ex parte* hearing on the merits of the case shall be conducted by the Panel.

ARTICLE 125. Conduct of Formal Investigation. - - A formal investigation shall be conducted whenever the merits of the case cannot be decided judiciously without conducting such investigation or when the respondent elects to have one, in which case, the investigation shall be held by the **Branch Management Panel (BMP)** not earlier than five (5) days nor later than ten (10) days from receipt of the respondent's answer or upon the expiration of the period to answer. Said investigation shall be finished within thirty (30) days from the issuance of the formal charge unless the period is extended by the disciplining authority in meritorious cases.

Investigators from the Security Division (SD) shall act as the prosecutorial arm of the agency during the formal hearings.

ARTICLE 126. Submission of Position Paper / Memorandum. - At any stage of the proceedings, the parties may, based on their mutual consent, submit position paper/memorandum and submit the case for resolution without any need for further hearings.

When there is a need for clarification of certain matters, the Branch Management Panel (BMP) may schedule a hearing to propound clarificatory questions to the parties or their witnesses, during which the parties shall be afforded an opportunity to be present but without the right to examine or cross-examine. If the parties so desire, they may submit questions to the Branch Management Panel (BMP) which the latter may propound to the parties or witnesses concerned. Thereafter, the Branch Management Panel (BMP) shall submit its findings, report and recommendation to the Adjudication Committee within five (5) days from such completion.

ARTICLE 127. Settlement in case of light offenses. -

127.1 Who may avail. - In cases of **light offenses** where the act is purely personal on the part of the private complainant and the person complained of and there is no apparent injury committed to the agency, settlement of offenses may be considered; **Provided** that, the settlement can no longer be applied for the second offense of the same act committed by the person complained of.

127.2 Guidelines. - The following are the guidelines in the settlement of purely personal matters in administrative cases:

- a) Compromise settlement shall be allowed only for administrative light offenses where the act is purely personal between the private complainant and the person complained of and there is no apparent injury to the government;

- b) Upon filing of the complaint, the Security Department (SD) shall determine whether the offense is purely personal or can be the subject of settlement;
- c) The following cases may be the subject of settlement and/or compromise:
 - 1] Borrowing money by superior officers from subordinates;
 - 2] Willful failure to pay just debts;
 - 3] Simple Misconduct resulting from misunderstanding / fight between respondent and complainant, provided that the act is not committed within office premises;
 - 4] Discourtesy in the course of official duties; and
 - 5] Other analogous circumstances / cases.

In these enumerated cases, compromise or settlement can no longer be applied for the second time the same act is committed.

The grant of back salaries and other benefits may likewise be subject of settlement and / or compromise.

- d) If the offense can be the subject of settlement, the Security Division (SD) shall order the respondent to comment and to indicate therein whether he/she is willing to submit the case for settlement.
- e) If the person complained of opted for settlement, the Security Division (SD) shall endorse the matter to the **Committee on Dispute Resolution (CDR) thru the Human Resource Officer (HRO) of the branch.** Upon transmission of the record by said HRO to the Executive Clerk of the CDR, the latter shall issue summons requiring the appearance of the parties.
- f) If settlement succeeds, a compromise agreement shall be executed between the parties and attested by the Presiding Officer of the Committee on Dispute Resolution (CDR).
- g) If during the settlement process, the parties failed to settle their differences, the Presiding Officer of the Committee on Dispute Resolution (CDR) shall issue an order terminating the process, and remand the case to the proper investigative body to the continuation of the investigation.
- h) In case of non-compliance with the compromise agreement, the case may be reopened for investigation until the final determination of the case.

ARTICLE 128. Pre-Hearing Conference. - At the commencement of the formal investigation, the **Branch Management Panel (BMP)** shall conduct a Pre-Hearing Conference for the parties to appear, consider and agree on any of the following:

- a. Stipulation of facts;
- b. Simplification of issues;
- c. Identification and marking of evidence of the parties;
- d. Waiver of objections to admissibility of evidence;
- e. Limiting the number of witnesses, and their names;
- f. Dates of subsequent hearings; and
- g. Such other matters as may aid in the prompt and just resolution of the case.

The agreement entered into during the pre-hearing conference is binding on both parties unless in the interest of justice, the Hearing Officer may allow a deviation from the same.

The conduct of a pre-hearing conference is **mandatory**. The failure of the respondent to attend the pre-hearing conference constitutes a waiver to participate in the pre-hearing conference but may still participate in the formal investigation upon appropriate motion.

ARTICLE 129. Proceedings before the Branch Management Panel (BMP). -

129.1 Powers of the Branch Management Panel (BMP). - The Branch Management Panel (BMP) shall have the following powers:

- a. To conduct the formal investigation of cases concerning offenses allegedly committed by rank-and-file employees of the casino branches and its satellite casinos;
- b. To administer oath on all matters or proceedings related to the performance of his duties;
- c. To issue subpoena *ad testificandum* to compel the attendance of witnesses and subpoena *duces tecum* for the production of documents or things;
- d. To impose penalties for violation of these rules; and
- e. To perform such other powers which the Panel deems necessary for the fair and speedy resolution of the case.

129.2 Cases Cognizable by the Branch Management Panel (BMP). –

A. Original Jurisdiction. - The Branch Management Panel (BMP) shall exercise exclusive original jurisdiction over cases with respect to offenses allegedly committed by a rank-and-file employee of the casino branch or its satellite casino.

B. Appellate Jurisdiction – The Branch Management Panel may, upon automatic review, affirm, modify or reverse the resolution/report/recommendation of the Branch Infraction Committee Cases (BIC) with respect to procedural deviations committed by rank-and-file employees of the casino branch or its satellite casino.

C. Exclusions. - The following cases shall be excluded from the jurisdiction of the Branch Management Panel:

- 1] Sexual offenses, which are cognizable by the Committee on Decorum and Ethics (CODE);
- 2] Cases cognizable by the Corporate Investigation Unit (CIU);
- 3] Cases cognizable by the Corporate Hearing Panel (CHP);
- 4] Cases cognizable by the Bingo Department Infraction Committee (BDIC).

129.3 Composition. - The Branch Management Panel (BMP) shall be composed of the following **voting** members:

- 1) General Manager, who shall act as the Chairperson;
- 2) Casino Shift Manager;
- 3) Assistant Branch Manager;
- 4) Senior / Slot Machine Head;
- 5) Senior / Treasury Head;
- 6) Senior / Chief Security Officer;
- 7) Senior / Branch Surveillance Officer; and
- 8) Legal Officer.

129.4 The Secretary of the BMP. – The Senior / Branch Human Resource Officer (S/BHRO) shall act as the Secretary of the BMP. The Secretary shall be a non-voting member.

The Secretary shall perform the following duties and responsibilities:

- a. Prepares and calendars agenda and minutes of the meeting;
- b. Records the entire proceedings of the Panel;
- c. Distributes agenda to the members at least one (1) day before the scheduled meeting;
- d. Serves letter of invitation to the employee and witnesses being called to explain before the Panel;

- e. Acts as custodian of all the records of the case together with all the evidence necessary for the documentation of the proceedings, files and exhibits;
- f. Monitors deferred cases; and
- g. Performs other functions deemed necessary for the fair, just and speedy resolution of the case.

ARTICLE 130. The Formal Hearing. –

130.1 Continuous Hearings Until Terminated. - Hearings shall be conducted on the hearing dates set by the Secretary of the Branch Management Panel (BMP) or as agreed upon by the during the Pre-Hearing Conference.

Each party may be granted one (1) postponement upon oral or written request.

If the respondent fails or refuses to appear or is not represented by counsel during the scheduled hearings despite due notice, the investigation shall proceed and the respondent shall be deemed to have waived his/her right to present evidence in his/her favor during the said hearing.

130.2 Preliminary Matters. - At the start of the hearing, the Presiding Officer of the Branch Management Panel (BMP) shall note the appearances of the parties and shall proceed with the reception of evidence for the complainant.

If, after being apprised of the right to counsel, the respondent appears without the aid of a counsel, he/she shall be deemed to have waived his/her right thereto.

Before taking the testimony of a witness, the Chairperson of the Branch Management Panel (BMP) shall place him/her under oath and then take his/her name, address, civil status, age and complete name and address of employment.

A sworn statement of the witness/es properly identified and affirmed shall constitute direct testimony, copy furnished the other party.

Clarificatory questions may also be asked.

130.3 Nature of Proceedings. - The proceedings before the Branch Management Panel (BMP) shall be non-litigious and summary in nature. The trial-type hearing practiced in courts shall not be used. The rules of procedure and evidence prevailing in courts of law and equity shall not be controlling and the Branch Management Panel (BMP) may avail of all reasonable means to ascertain the truth and to resolve the case in a fair and expeditious manner.

130.4 Hearing Dates. - The schedule of hearings shall be followed strictly without further notice. Only one (1) postponement shall be granted upon a request actually received by the Secretary of the Branch Management Panel (BMP) three (3) calendar days before the scheduled hearing.

If the respondent fails or refuses to appear during the scheduled hearing despite due notice, the investigation shall proceed *ex parte* and the respondent shall be deemed to have waived his right to be present and to submit evidence for his defense.

130.5 The Hearing Proper. - The Presiding Officer of the Branch Management Panel (BMP) shall exercise complete control of the proceedings at all stages. He shall take full control of the proceedings, examine the parties and their witnesses to satisfy himself with respect to the matters at issue, and may allow the parties or their counsel to ask questions only for the purpose of clarifying points of law or fact involved in the case. The Branch Management Panel (BMP) shall limit the presentation of evidence to matters relevant to the issue before him and necessary for a just and speedy disposition of the case.

The Branch Management Panel (BMP) shall conduct a closed and confidential session. It shall have the authority to summon the concerned employee, witnesses, or resource person and to request production of evidence pertinent to the inquiry.

The following ground rules shall be observed:

1) The Chairperson of the Branch Management Panel (BMP) shall preside over its sessions.

2) Every case shall be heard in one sitting, except in complex cases where it may set one or two issues for hearing from day to day until such hearing is terminated.

3) Witnesses may shall be excluded during the testimony of any party or other witness. The Presiding Officer shall exercise reasonable control over the order and number of witnesses to be heard.

4) All witnesses shall testify in person. All persons who are summoned to testify before the Branch Management Panel (BMP) to shed light to the circumstances of the case must personally appear. Inexcusable failure on the part of any employee who, despite due notice, failed or refused to appear before the Branch Management Panel (BMP) may be subjected to disciplinary action.

5) Copies of any document in support of the party's statement or any paper necessary in the disposition of the case which is in the possession of the party shall be provided by him upon the request of the Branch Management Panel (BMP).

6) The strict rules of evidence shall not apply but the rules of courtesy and respect shall apply. This shall assure free-flowing examinations of all witnesses.

7) The Branch Management Panel (BMP) shall, as far as practicable, position the parties, their counsels, and witnesses in such a manner that they are able to see each other, thus facilitating dialogue among them.

8) The parties and their witnesses shall simultaneously swear to the truth of the testimonies they will give during the adjudication hearing.

9) The Branch Management Panel (BMP) shall hear the factual issues of the case in the order in which these have been drawn up during the pre-hearing conference. Two or more related issues may be heard together.

10) Unless the Branch Management Panel (BMP) directs otherwise, the **order of hearing** may be as follows:

- i. The prosecution shall present its evidence;
- ii. The respondent shall present evidence in support of his/her defense;
- iii. There may be rebuttal of sur-rebuttal.

11) All **objections** raised during the hearing shall be resolved by the Presiding Officer. However, objections that cannot be ruled upon by the Panel shall be noted with the information that the same shall be included in the memorandum of the concerned party to be ruled upon by the Adjudication Committee.

The Branch Management Panel (BMP) shall admit all evidence formally offered subject to the objection/s interposed against its admission.

12) Upon the conclusion of the presentation of witnesses and evidence, the parties shall **formally offer** their evidence either orally or in writing. Thereafter, both parties may be given time to submit their respective **memorandum** which in no case shall be beyond five (5) days after the termination of the investigation. Failure to submit the same within the given period shall be considered a waiver thereof.

13) All documentary evidence or exhibits shall be properly **marked** by letters (A, B, C, etc.), if presented by the complainant, and by numbers (1, 2, 3, etc.), if presented by the respondent. These shall form part of the complete records of the case.

14) Records of the proceedings during the formal investigation may be taken by shorthand, audiotape, video recording, or by any other means.

15) When the Branch Management Panel (BMP) has already taken up all the factual issues in the case, the Presiding Officer may at his/her discretion allow each party to make a closing argument.

130.6 Disposition of the case. - The Branch Management Panel (BMP) may, in the exercise of his sound discretion:

- a. dismiss the case for insufficient evidence or for lack of merit;
- b. find the respondent guilty of the act or omission complained of, and recommend appropriate sanctions;
- c. remand the case to the Corporate Investigation Unit for reinvestigation, and reconvene to continue the hearing;
- d. call for the presentation of oral arguments on an issue which, in the interest of justice and equity, is necessary for a fair resolution of the case; or
- e. archive the matter for good cause shown, in the judgment of the Panel.

Good cause may include an actual or impending criminal indictment against the respondent.

130.7 Judgment of the Panel. –

130.7.1 By whom rendered. - The judgment shall be rendered by the members of the Panel who actually participated in the deliberation on the merits of the case.

130.7.2 Quorum and voting in the Panel. - The majority vote of the members, including the Chairperson, who actually participated in the deliberation on the merits of the case shall be necessary the pronouncement of a judgment or resolution.

The Chairperson and each member of the Panel shall be entitled to one (1) vote.

Voting by proxy or thru a representative shall not be valid.

130.7.3 Inhibition. - The Chairperson or any member of the Panel may abstain or voluntarily inhibit himself from voting on any matter submitted for decision whenever there are circumstances that tend to affect his impartiality.

130.8 Appearance of Advisor/Counsel. - The appearance of an advisor/counsel is optional. An advisor may be an attorney or any other adult person.

An advisor/counsel may attend the hearing and sit near his advisee/client during the hearing; communicate quietly with his advisee/client during the hearing; and may respond to a direct question from any member of the Branch Management Panel (BMP). An advisor/counsel may not make an oral presentation at the hearing and may not submit a written request directly to the Panel, although an advisor/counsel may assist his advisee/client to prepare written submissions.

Any counsel who is a member of the Philippine Bar appearing before any hearing or investigation shall manifest orally or in writing, his appearance for either the respondent or the complainant, stating –

- a. his full name;
- b. Mailing address, which is not a post office box number;
- c. Telephone/cellular phone number and e-mail address, if available;
- d. Roll of Attorneys Number;
- e. IBP Official Receipt Number or IBP Lifetime Membership Number, including the date and place of issue;
- f. Current Professional Tax Receipt (PTR) Number, including the date and place of issue;
- g. Mandatory Continuing Legal Education (MCLE) Compliance or Exemption Certificate Number and the date of issue.

If the lawyer is a government employee, he/she shall be required to present an authority to practice profession which should come from the agency head or the agency head's authorized representative.

A non-lawyer who assists or accompanies a party shall show a special power of attorney authorizing such person to appear with such party. In case the party is out of the country and the advisor represents him, the special power of attorney must be authenticated by the consular office concerned and comply with other applicable formalities for their execution.

Any pleading or appearance of an advisor/counsel without complying with any of the above-stated requirements shall not be recognized.

130.9 Disruptive Behavior. - Disruptive behavior or discourtesy by any participant in the hearing is ground for expulsion from the hearing.

130.10 Witnesses. - Any member of the Branch Management Panel (BMP) shall have the right to question any and all witnesses, to examine documentary evidence presented, and to call other witnesses. Witnesses shall not be present during the testimony of any party or other witness. The Presiding Officer shall exercise reasonable control over the order and number of witnesses to be heard.

130.11 Per diems. - All members of the Branch Management Panel (BMP) who actually participated in the formal investigation shall be entitled to per diems for every hearing.

ARTICLE 131. Filing of Pleadings. - All pleadings filed by the parties with the disciplining authority or his authorized representative shall be copy furnished the other party with proof of service. Any pleadings sent by registered mail shall be deemed filed on the date shown by the postmark on the envelope which shall be attached to the records of the case and in the case of personal delivery, the date stamped thereon by the disciplining office.

No pleadings shall be filed *via* e-mail, facsimile or any other electronic medium.

ARTICLE 132. The Branch Management Panel (BMP) Report. - Within fifteen (15) days following the conclusion of the formal investigation, a report containing a narration of the findings of facts established during the investigation and hearings, the legal basis, as well as the recommendations of the Branch Management Panel (BMP) shall be submitted to the Secretary of the Adjudication Committee. The complete record of the case shall be appended to the Report.

ARTICLE 133. Elevation of the case to the Adjudication Committee. -

133.1 Automatic Review of Resolution of the Branch Management Panel (BMP). - Within ten (10) following the conclusion of the formal hearings before the Branch Management Panel (BMP), the Formal Investigation Report and the record of the case shall be submitted to the Adjudication Committee for evaluation and review.

The Adjudication Committee may affirm, modify or reverse the findings and conclusions of the Branch Management Panel (BMP).

133.2 Quorum; Votes Required. - A simple majority of all the members of the Adjudication Committee shall be necessary to constitute a quorum to deliberate on and decide any matter before it. Further, the vote or concurrence of a majority of the members constituting a quorum shall be necessary for the pronouncement of a decision, resolution, order or ruling.

The Chairperson and members of the Adjudication Committee shall each have one (1) vote.

Voting by proxy or thru a representative shall not be valid.

133.3 Abstention. - Any member may abstain from voting on any case/matter before the Committee on legal or justifiable grounds.

ARTICLE 134. *When Case is Decided.* – The Board of Directors shall render its decision on the case within thirty (30) days from receipt of the Report/Recommendation of the Adjudication Committee.

ARTICLE 135. *Finality of the Decision.* - A decision rendered by the Board of Directors whereby a corrective action of suspension of not more than thirty (30) days is imposed, shall be final and executory.

If the corrective action imposed is suspension exceeding thirty (30) days, demotion or dismissal, the same shall be final and executory after the lapse of the reglementary period for filing a motion for reconsideration or an appeal and no such motion or pleading has been filed.

ARTICLE 136. *Contents of the Decision.* - The Board of Directors may adopt the factual findings and legal reasons in the report submitted by the Adjudication Committee.

The decision shall include a brief statement of -

- a] the parties;
- b] the facts of the case;
- c] the issue/s involved;
- d] the applicable law or rules;
- e] the conclusions and reasons therefor;
- f] the relevant evidence, circumstances and factors that were considered as basis for either the exoneration or the imposition of the appropriate corrective action / penalty; and
- g] the approval by a majority of the members of the Board of Directors.

ARTICLE 137. *Service of Decision.* - Decisions of the Board of Directors shall be served by the Human Resource and Development Department (HRDD) either personally or by registered mail at respondent's place of assignment or at his last known address within three (3) days from rendition thereof.

In all cases, proof of such service shall be attached to the records for information and ready reference.

ARTICLE 138. *Motion for Reconsideration.* -

138.1 Filing deadline. - The party adversely affected by the decision may file a motion for reconsideration with the Board of Directors within fifteen (15) calendar days from receipt thereof.

No request for extension of the period within which to file a motion for reconsideration shall be allowed.

138.2 When deemed filed. - A motion for reconsideration sent by registered mail shall be deemed filed on the date shown by the postmark on the envelope which shall be attached to the records of the case. In case of personal delivery, it is deemed filed on the date stamped thereon by the proper office.

138.3 Procedure. - The following procedural sequence shall be followed:

1. Following receipt by the erring corporate employee of the decision of the Board of Directors, he may manifest his **intent to appeal** thru the form furnished by the HRDD.

2. Within fifteen (15) calendar days from the time the erring corporate employee was notified of the adverse decision, he shall file his **letter of request** (i.e. motion for reconsideration) with the office of the head / officer-in-charge of the Human Resource and Development Department (HRDD).

3. The HRDD shall -

a] transmit the appeal to the Adjudication Committee (AC), **AND**

b] certify that an appeal had been filed within the non-extendible period of fifteen (15) calendar days.

II. After deliberation on the merits of the appeal, the Adjudication Committee *en banc* shall resolve whether to grant or deny the appeal.

III. The resolution / recommendation of the Adjudication Committee *en banc* shall be forwarded to the Board of Directors for appropriate action.

138.4 Limitations. - The filing of a motion for reconsideration shall be limited exclusively to the following grounds:

- 1) Newly discovered evidence which materially affects the decision rendered;
- 2) The decision is not supported by the evidence on record; or
- 3) Errors of law or irregularities have been committed prejudicial to the interest of the movant.

Only one (1) motion for reconsideration shall be entertained. If a second motion for reconsideration is filed notwithstanding its prohibition under these Rules, the finality of action shall be reckoned from the denial of the first motion for reconsideration.

138.5 Effect of Filing. - The filing of a motion for reconsideration within the reglementary period of fifteen (15) days shall stay the execution the decision sought to be reconsidered.

ARTICLE 139. Appeal. - The following provisions shall govern an appeal from the decision of the agency:

139.1 Filing. - Should the motion for reconsideration be denied, the respondent may appeal the matter to the Civil Service Commission (CSC) Proper within fifteen (15) days from receipt thereof.

An appeal shall not stop the decision of the head of agency from being immediately executory.

Where the penalty is suspension exceeding thirty (30) days or fine in an amount exceeding thirty (30) days' salary, demotion, or dismissal, the decision rendered by the head of agency is appealable to the Commission Proper within a period of fifteen (15) days from receipt thereof.

139.2 When deemed filed. - An appeal sent by registered mail shall be deemed filed on the date shown on the postmark on the envelope which shall be attached to the records of the case. In case of personal delivery, it is deemed filed on the date stamped thereon by the proper office.

139.3 Appeal fee. - The appellant shall pay an appeal fee and a copy of the official receipt thereof shall be attached to the appeal.

139.4 Perfection of an appeal. - To perfect an appeal, the appellant shall submit three (3) copies of the following documents:

- a) Appeal memorandum containing the grounds relied upon for the appeal, together with the certified true copy of the decision, resolution or order appealed from, and certified copies of the documents or evidence. The appeal memorandum shall be filed with the appellate authority, copy furnished the agency. The latter shall submit the records of the case, which shall be systematically and chronologically arranged, paged and securely bound to prevent loss, with its comment, within fifteen (15) days to the appellate authority.
- b) Proof of service of a copy of the appeal memorandum to the disciplining office;
- c) Proof of payment of the appeal fee; and
- d) A statement or certification of non-forum shopping.

When an appellant fails to comply with any of the above requirements within the reglementary period, the Commission shall direct compliance within a period of not more than ten (10) days from

receipt thereof, with a warning that failure to comply shall be construed as failure to perfect an appeal and shall cause the dismissal of the appeal with prejudice to its refiling.

An appeal sent by mail shall be deemed filed on the date shown by the postmark on the envelope which shall be attached to the records of the case. In the case of personal delivery, the date stamped thereon by the proper office shall be the point of reference.

TITLE VI

RULES GOVERNING CASES COGNIZABLE BY THE HUMAN RESOURCE & DEVELOPMENT DEPARTMENT

ARTICLE 140. *Scope and Coverage.* - The following rules shall govern cases initiated by, and brought before the Human Resource and Development Department (HRDD) for investigation.

These rules shall apply to all officers and employees of the PAGCOR, whether probationary, contractual, casual, regular, or co-terminus in all the Corporate offices, casino branches, satellites, arcade, poker clubs, bingo venues and establishments wherein officers and employees of the agency are assigned.

ARTICLE 141. *Exclusions.* - Cases, which pursuant to these Rules are investigated by -

- a. the Corporate Investigation Unit;
- b. the Security Department;
- c. the Security Division of the branch; or
- d. the Bingo Department Infraction Committee.

shall be excluded from the application of the rules under this Title.

ARTICLE 142. *Cases covered.* - The Human Resource and Development Department (HRDD) shall take cognizance in the first instance, investigate and evaluate cases relating to the following:

- a. Unauthorized absence/s;
- b. Habitual absenteeism;
- c. Habitual tardiness;
- d. Submission of falsified documents relative to one's appointment, promotion or other personnel action;
- e. Using a falsified medical certificate to justify one's leave;
- f. Violation of rules on attendance and leave;
- g. Attendance fraud;
- h. Cheating in any examination/test administered by the agency;
- i. Violation of rules on proper notification of absence;
- j. Failure to submit one's Statement of Assets, Liabilities and Net Worth (SALNW);
and
- k. Analogous cases.

ARTICLE 143. *Who may Initiate.* - Administrative proceedings may be initiated by the Head of the Human Resource and Development Department (HRDD) or his/her duly authorized representative upon discovery of an apparent irregularity with respect to Company personnel policies and rules governing attendance and leave. Accordingly, a **show-cause memorandum** shall be issued ordering the person/s complained of to submit a **Counter-Affidavit/ Comment under oath** within three (3) days from receipt of the order directing him/her/them to explain why no administrative case should be filed against him/her/them.

ARTICLE 144. *Preliminary Investigation.* -

144.1 Definition. - A preliminary investigation is a proceeding undertaken to determine whether a *prima facie* case exists to warrant the issuance of a formal charge. It involves a fact-finding

investigation or an *ex parte* examination of records and documents submitted by the complainant and the person/s complained of, as well as documents readily available from other offices.

144.2 How conducted. - After the issuance by the Head of the Human Resource and Development Department (HRDD) or his/her duly authorized representative of a **show-cause memorandum**, and the submission by the person complained of his/her **Counter-affidavit / Comment under oath**, the parties and witnesses, if any, may be summoned to a conference wherein the Head of the HRDD or his/her authorized representative may propound clarificatory and other relevant questions.

Failure or refusal of the person complained of to submit his/her Counter-Affidavit / Comment under oath shall be considered a waiver thereof, and the preliminary investigation may be completed even without his/her Counter-Affidavit / Comment under oath.

144.3 Duration of the Investigation. - A preliminary investigation shall commence not later than five (5) days from receipt of the complaint by the disciplining authority and shall be terminated within twenty (20) days thereafter.

ARTICLE 145. Investigation Report. - Within five (5) days from the termination of the preliminary investigation, the Human Resource and Development Department (HRDD) or his/her duly authorized representative shall submit the Investigation Report with recommendation and the complete records of the case to the Corporate Hearing Panel (CHP) for appropriate action.

ARTICLE 146. Resolution After the Preliminary Investigation. - If a *prima facie* case is established during the investigation, the head of the agency may, upon the recommendation of the Head of the Human Resource and Development Department (HRDD), issue either a formal charge or a notice of charge/s pursuant to these Rules.

ARTICLE 147. Notice of Charge/s and Notice to Explain. - After a finding of a *prima facie* case, the head of the agency shall issue Notice of Charge/s against the person complained of, who shall now be called as respondent.

The **Notice of Charge/s** shall state the following:

- a] specification of charge/s, as defined under the PAGCOR Code of Discipline;
- b] a brief statement of material or relevant facts which must answer the following questions:
 - i. Who committed the alleged offense?
 - ii. What actually happened?
 - iii. When / Where / How did it happen?
 - iv. Witnesses, if any?
- c] certified true copies of documentary evidence, if any;
- d] sworn statements covering the testimony of witnesses;
- e] an **Order to Explain** directing the respondent to file his **Answer** to the charge/s within seventy-two (72) hours from receipt thereof;
- f] an advice for the respondent to indicate in his/her answer whether or not he elects a formal investigation of the charge/s; and
- g] a notice that he/she may opt to be assisted by a counsel (i.e. lawyer) of his/her choice. However, he (i.e. respondent) must personally appear during the hearing. Counsel shall not be entertained unless the respondent himself is present, and respondent's absence shall be deemed a waiver of his right thereto.

If the respondent has submitted his Counter-affidavit / Comment under oath during the preliminary investigation, he shall be given the opportunity to submit additional evidence.

ARTICLE 148. *Prohibited Pleadings.* - No requests for clarification, bills of particulars, motion to dismiss, motion to quash or motion for reconsideration shall be entertained. If any of these pleadings or motions are interposed by the respondent, the same shall be considered as an answer and shall be evaluated as such.

ARTICLE 149. *Answer.* - The answer, which may either be a specific denial or an affirmation of the allegations in the complaint, shall be in writing and must contain 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 include a statement indicating whether or not the respondent elects a formal investigation.

ARTICLE 150. *Failure to File Answer.* - If the respondent fails or refuses to submit his/her answer to the formal charge or notice of charge/s within the period provided in the formal charge or notice of charge/s which shall not be less than three (3) days from receipt thereof, he/she shall be considered to have waived his right to submit the same, and the case may be decided based on available records.

ARTICLE 151. *Waiver of Right to a Formal Hearing.* - When the right to a formal hearing is waived by the respondent, a resolution may forthwith be rendered on the pleadings and other evidence on hand, provided that the same are sufficiently substantial to support a resolution or conclusion. Accordingly, the Human Resource and Development Department (HRDD) shall forward the records and the evidence to the Corporate Hearing Panel (CHP) for appropriate action.

If, upon the determination of the Corporate Hearing Panel (CHP), no such decision or conclusion could be attained on the basis of the evidence on hand, then an *ex parte* hearing on the merits of the case shall be conducted by the Hearing Officer.

ARTICLE 152. *Conduct of Formal Investigation.* - A formal investigation shall be conducted by the disciplining authority where the merits of the case cannot be decided judiciously without conducting such investigation or when the respondent elects to have one, in which case, the investigation shall be held by the **Corporate Hearing Panel** not earlier than five (5) days nor later than ten (10) days from receipt of the respondent's answer or upon the expiration of the period to answer. Said investigation shall be finished within thirty (30) days from the issuance of the formal charge unless the period is extended by the disciplining authority in meritorious cases.

The Human Resource and Development Department (HRDD) shall act as the prosecutorial arm of the agency during the formal hearings.

The rules of procedure governing proceedings of the Corporate Hearing Panel (CHP) shall likewise apply to cases investigated upon by the Human Resource and Development Department (HRDD). In addition, the rules of procedure with respect to the elevation of the case to the Adjudication Committee and ultimately to the Board of Directors shall apply.

ARTICLE 153. *Unauthorized Absences.*

153.1 Definitions. –

- a. **ABSENCE** is the failure of the employee to report for work for a half-day or entire day.
- b. **HALF-DAY ABSENCE** is incurred when an officer or employee does not report for work either for the whole morning or the whole afternoon.
- c. **TARDINESS** is the failure to arrive at a time set; lack of punctuality.
- d. **LOAFING** is defined as frequent unauthorized absences from duty during regular hours. This constitutes inefficiency.
- e. **HABITUAL ABSENTEEISM** is the incurrence of unauthorized absence exceeding the allowable 2.5 days monthly leave credit under the Leave Law for at least three (3) months in a semester or at least three (3) consecutive months during the year.
- f. **HABITUAL TARDINESS** is the incurrence of tardiness, regardless of the number of minutes, ten (10) times a month for at least two (2) months in a semester or at least two consecutive months during the year.

ARTICLE 154. *Dropping from the Rolls.* -

154.1 Dropping from the Rolls; Non-Disciplinary in Nature. - This mode of separation from the service for unauthorized absences or unsatisfactory or poor performance or physical or mental incapacity is non-disciplinary in nature and shall not result in the forfeiture of any benefit on the part of the official or employee or in disqualification from reemployment in the government.

154.2 Grounds and Procedure for Dropping from the Rolls. - Officers and employees who are either habitually absent or have unsatisfactory or poor performance or have shown to be physically and mentally unfit to perform their duties may be dropped from the rolls subject to the following procedures:

A. Absence Without Approved Leave

1. An officer or employee who is continuously absent without official leave (AWOL) for at least thirty (30) working days shall be separated from the service or dropped from the rolls without prior notice. He/She shall, however, be informed of his/her separation not later than five (5) days from its effectivity which shall be sent to the address appearing on his/her 201 File or to his/her last known address;

2. If the number of unauthorized absences (UA) incurred is less than thirty (30) working days, a written Return-to-Work Order shall be served on the official or employee at his/her last known address on record. Failure on his/her part to report to work within the period stated in the order shall be valid ground to drop him/her from the rolls.

3. If it is clear under the obtaining circumstances that the official or employee concerned, has established a scheme to circumvent the rule by incurring substantial absences though less than the thirty (30) working days, three (3) times in a semester, such that a pattern is already apparent, dropping from the rolls without notice may likewise be justified.

B. Unsatisfactory or Poor Performance

1. An official or employee who is given two (2) consecutive unsatisfactory ratings may be dropped from the rolls after due notice. Notice shall mean that the officer or employee concerned is informed in writing of his/her unsatisfactory performance for a semester and is sufficiently warned that a succeeding unsatisfactory performance shall warrant his/her separation from the service. Such notice shall be given not later than thirty (30) days from the end of the semester and shall contain sufficient information which shall enable the official or employee concerned to prepare an explanation.

2. An official or employee, who for one evaluation period is rated "Poor" in performance, may be dropped from the rolls after due notice. Due notice shall mean that the officer or employee is informed in writing of the status of his/her performance not later than the fourth (4th) month of that rating period with sufficient warning that failure to improve his/her performance within the remaining period of the semester shall warrant his/her separation from the service. Such notice shall also contain sufficient information which shall enable the official or employee to prepare an explanation.

C. Physically Unfit

1. An officer or employee who is continuously absent for more than one (1) year by reason of illness may be declared physically unfit to perform his/her duties and the head of office in the exercise of his/her sound judgment may consequently drop him/her from the rolls.

2. An officer or employee who is intermittently absent by reason of illness for at least two hundred sixty (260) working days during a twenty-four (24) – month period may also be declared physically unfit by the head of office.

3. An officer or employee who is behaving abnormally and manifests continuing mental disorder and incapacity to work as reported by his/her co-workers or immediate supervisor and confirmed by a competent physician, may likewise be dropped from the rolls.

4. For the purpose of the three (3) preceding paragraphs, notice shall be given to the officer or employee concerned containing a brief statement of the nature of his/her incapacity to work.

154.3 Written Notice; Who signs. - The written notice mentioned in the preceding paragraphs may be signed by the person exercising immediate supervision over the officer or employee. However, the notice of separation shall be signed by the appropriate appointing authority or head of office.

154.4 Order of Separation; Immediately Executory. - The order of separation is immediately executory pending appeal, unless the Civil Service Commission, on meritorious grounds, directs otherwise.

TITLE VII

RULES GOVERNING CASES COGNIZABLE BY THE COMMITTEE ON DECORUM AND ETHICS

COVERAGE

ARTICLE 155. Employees Covered by the Rules. - These Rules shall apply to all officers and employees of the Philippine Amusement and Gaming Corporation (PAGCOR), whether regular, probationary or contractual employees in the corporate offices and in all casino branches, VIP clubs / slot machine arcades, satellite casinos, economic zone licensed casinos, bingo venues, and field establishments (e.g. warehouses), irrespective of position, rank, and compensation level, including consultants and those holding primarily confidential, highly technical and policy-determining positions.

These rules shall also apply whenever the offended party (i.e. complainant) is a cigarette attendant, waiter/waitress or an employee of a concessionaire or proprietor of an establishment who in the ordinary course of business transact with employees of PAGCOR.

ARTICLE 156. Scope of the Offenses. - Sexual misconduct and sexual harassment against females by males, males by females and same-sex misconduct or harassment shall be proceeded against in accordance with these Rules.

This policy also covers sexual misconduct or sexual harassment that occurs off company premises, such as at company-sponsored events or programs, athletic events, and non-Company sponsored activities that result in a hostile or offensive working / learning environment.

For purposes of these Rules, “**company premises**” shall refer to the office or worksite, where the workers are habitually employed and shall include the office or place where the workers who have no fixed or definite worksite regularly report for assignment in the course of their employment. It shall include venues used by the employee for company-sponsored activities, any place where a worker is or is likely to be engaged in any work and any office, building, vessel, vehicle, or a mobile equipment used by a worker in work.

NATURE OF THE OFFENSES

ARTICLE 157. Definition of the Offenses. -

- a. **SEXUAL MISCONDUCT** is defined as any unwanted physical act of a sexual nature perpetrated against an individual without consent or when an individual is unable to freely give consent.

b. **SEXUAL HARASSMENT** is defined as unwelcome or unsolicited conduct of a sexual nature, whether physical, verbal or visual, committed against an individual without consent wherein:

- (1) an individual, with abuse of power, authority or moral ascendancy, demands sexual favor from another person, whether reciprocated or not, in exchange for favorable employment decisions, evaluations, job benefits or privileges; or
- (2) The conduct would be offensive to a reasonable person under the circumstances in question and, if not corrected, could interfere with an individual's academic or work performance or create or substantially contribute to an intimidating, hostile, or offensive environment.

ARTICLE 158. Elements of the Sexual Harassment. -

(1) Conduct of a Sexual Nature. This includes conduct that is verbal, visual, or physical. Conduct of a sexual nature may either be explicitly sexual or may involve conduct that derives its sexual nature from the circumstances in which the conduct occurs or when combined with other conduct that occurs in a sexual context. Conduct does not need either to express any sexual desire or to be directed to a specific person and can include conduct that attempts to demean, control, or stereotype others on the basis of their sex.

(3) Unwelcome conduct. For purposes of this policy, conduct is considered "**unwelcome**" if, under the totality of the circumstances it is (1) neither solicited or incited; and (2) if it is regarded by the recipient as undesirable or offensive.

The **ultimate question** to be asked is: "**how would the reasonable person in the same or similar circumstances perceive the conduct?**" An objective assessment of the facts and surrounding circumstances should consider the following factors:

a. **Severity of the conduct:** the degree of aggression and physical contact which occurred shall be ascertained. Generally, behaviors can be placed along a continuum ranging from mild to severe. While no hard lines can be drawn, general groupings can be made.

b. **Number and frequency of encounters:** the number of incidents and the time span between each is important. What seems less severe when happening only once may become more serious when repeated often and with persistence.

c. **Apparent intent of the harasser:** the question to be asked is what reasonable people would have meant had they acted in a similar manner. Also important is whether the behavior was directed at the victim or simply overheard or seen.

d. **Relationship of the offender and the offended party:** studies reveal that people generally expect higher levels of conduct from supervisors. What may be permissible from a co-worker is inappropriate from supervisory personnel and may be more serious and more threatening because of the power relationship. Also to be considered is the nature of their interpersonal relationship--do they generally get along well, have they had an on-going feud for sometime, or were they romantically involved?

e. **Victim's provocation:** the behavior of the victim should be considered but not overweighed. Blaming the victim for causing the harassment is a common pattern which should be avoided. However, if the receiving employee does provoke or illicit such behavior, then it loses its "unwelcome" connotation.

f. **Response of the victim:** it is generally assumed that the victim has some responsibility for communicating that the behavior is unwelcome. This responsibility makes more sense when considered in the light of the severity of the conduct directed toward him or her. The more severe the conduct, such as forced fondling or attempted rape, the less responsibility the victim has to express an objection. The milder the conduct, such as jokes or teasing, the more responsibility the victim has to speak up. This factor should be weighed since many victims are afraid to respond honestly, especially when the offending employee is a supervisor or a well liked co-worker.

g. **Effect or impact on the victim:** an assessment should be made of the consequences of the offensive behavior on the employee and the seriousness of the "injury." Was the employee embarrassed, humiliated, physically injured, demoted, denied a promotion, etc.?

h. **Working environment:** reasonable people usually expect different behaviors depending on the nature of the work environment. What is appropriate in a blue-collar factory may not be appreciated or appropriate in the white-collar office.

i. **Public or private situations:** different types of harassing behaviors could be more or less serious depending on whether they happened publicly or privately.

(4) Consent defined. Consent is an affirmative decision to engage in mutually acceptable sexual activity given by clear actions or words. It is an informed decision made freely and actively by all parties. Relying solely upon non-verbal communication can lead to miscommunication. It is important not to make assumptions; if confusion or ambiguity on the issue of consent arises anytime during the sexual interaction, it is essential that each participant stops and clarifies, verbally, willingness to continue. Consent may not be inferred from silence, passivity, or lack of active resistance alone. Furthermore, a current or previous dating or sexual relationship is not sufficient to constitute consent, and consent to one form of sexual activity does not imply consent to other forms of sexual activity. Being intoxicated does not diminish one's responsibility to obtain consent.

Conduct will be considered "**without consent**" if no clear consent, verbal or non-verbal, is given. It should be noted that in some situations an individual's ability to freely consent is taken away by another person or circumstance. Examples include, but are not limited to, when an individual is intoxicated, "high," scared, physically or psychologically pressured or forced, passed out, intimidated, coerced, mentally or physically impaired, beaten, threatened, isolated, or confined.

(5) The use of alcohol or other drugs. Being intoxicated or high is never an excuse for either sexual misconduct or sexual harassment.

(6) Offensive to a Reasonable Person. For purposes of this rules, a determination whether the conduct would be offensive to a reasonable person shall be determined under the **totality of the circumstances**, including but not limited to the nature and context of the conduct, its frequency, the relationship of the parties, whether the offending party was asked to cease the offending conduct, and whether the offending party did so.

(7) Moral ascendancy. - As determined by the Committee on Decorum and Ethics, moral ascendancy shall refer to a person's dominant or superior position or condition by reason of –

- a. A marked or significant difference between the position or rank of the alleged harasser and the complainant;
- b. A reasonable person's perception of the respect due a person;
- c. Age or seniority;
- d. Gender;
- e. Reputation or standing in the company/workplace; or
- f. Other analogous factors or a combination thereof.

ARTICLE 159. Sexual Misconduct. - Any officer or employee of the agency who committed abuses against chastity, lascivious acts, sexual assault or any sexual perversity shall be held liable for sexual misconduct whenever the elements constituting the offense of sexual harassment as defined hereunder are incomplete.

TYPES OF SEXUAL MISCONDUCT AND SEXUAL HARASSMENT

ARTICLE 160. Types of Sexual Misconduct. - There are three (3) types of sexual misconduct depending upon its gravity or seriousness, namely: sexual assault, sexual violation and sexual impropriety.

- 1) **SEXUAL ASSAULT** includes, but is not limited to, rape, forcible sodomy, forcible oral copulation, sexual assault with an object, forcible fondling (e.g., unwanted touching or kissing for purposes of sexual gratification), or threat of sexual assault. Its seriousness is classified into three (3) levels, namely:

a) **Level 1 (Forcible Touching)**

This offense involves the forcible touching of the sexual or other intimate parts of another person for the purpose of degrading or abusing such person; or for the purpose of gratifying the actor's sexual desire. Forcible touching includes the kissing, fondling, squeezing, grabbing, or pinching of such other person's sexual or other intimate parts.

b) **Level 2 (Causing Reasonable Fear or Bodily Harm)**

It is a level 2 offense if, during a sexual assault –

- i. The attacker uses a weapon or threatens to use a weapon (imitation or real);
- ii. The attacker threatens to harm a person other than the victim; or
- iii. More than one (1) person assaults the victim in the same incident.

c) **Level 3 (Aggravated Sexual Assault)**

It is a level 3 offense if, while committing a sexual assault, the attacker:

- i. Wounds, maims, disfigures or brutally beats the victim;
- ii. Inserts a finger or foreign object in the vagina, urethra, penis or rectum of another person by forcible compulsion or when the other person is incapable of consent by reason of being physically helpless; or
- iii. Endangers the life of the victim,

- 2) **SEXUAL VIOLATION** includes the unwanted touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thighs, buttocks, or any sexualized body part of another person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

- 3) **SEXUAL IMPROPRIETY** comprises behavior, gestures, or expressions that are seductive, sexually suggestive, or sexually demeaning to a person, including but not limited to:

- a) lascivious exhibition of the genitals, buttocks or pubic area of a person;
- b) the commission under scandalous circumstances of acts such as, but not limited to the following:
 - i. masturbation;
 - ii. *fellatio* / cunnilingus; or
 - iii. bestiality.

- c) Invasion of privacy (*i.e., the act of observing, attempting to observe, or interfering in an offender's personal, intimate routines unrelated to the necessary performance of required job duties*).
- d) Disrobing or draping practices that reflect a lack of respect for the patient's privacy, deliberately watching a patient dress or undress, instead of providing privacy for disrobing;
- e) Subjecting a person to an intimate examination in the presence of other parties without the explicit consent of such person or when consent has been withdrawn;
- f) Inappropriate or sexually demeaning comments about or to a person, including but not limited to criticizing the person's sexual orientation (homosexual, heterosexual, or bisexual);
- g) Making comments about potential sexual performance during an examination or consultation except when the examination or consultation is pertinent to the issue of sexual function or dysfunction, requesting details of sexual history or sexual likes or dislikes when not clinically indicated for the type of consultation;
- h) Initiation of a conversation regarding one's sexual inadequacies, preferences, or fantasies;
- i) Public displays of sex toys (e.g. vibrator, dildo) or objects that resemble genitalia, or hard-core pornographic materials that tend to offend the sensibilities of others.

ARTICLE 161. Types of Sexual Harassment. - There are four (4) types of sexual harassment. They may occur independently or concurrently.

1) Quid pro quo ("this for that") sexual harassment refers to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decision. This occurs when an employee with authority or control over the terms and conditions of another employee's work offers her a work benefit or advantage in exchange for sexual favors or gratification.

To prove a claim for *quid pro quo* sexual harassment, the employee must establish the following elements:

- a. That the alleged harasser made sexual advances or sexual requests, or otherwise engaged in conduct of a sexual nature;
- b. the sexual conduct was unwelcome;
- c. he/she rejected such advances, requests or conduct; and
- d. the terms or conditions of his/her employment were then adversely affected.

or

- a. That the alleged harasser made sexual advances or sexual requests, or otherwise engaged in conduct of a sexual nature;
- b. the sexual conduct was unwelcome;
- c. he or she submitted to such advances, requests or conduct; and
- d. when he/she submitted to the unwelcome sexual conduct, he/she did so in reasonable fear of adverse employment action.

2) Hostile work environment sexual harassment exists when one's work, education or training environment is intimidating, hostile or offensive due to unwelcome verbal or physical conduct of a lewd or lascivious nature. It is sufficient that the offender's conduct tends to alter the conditions of employment or is reasonably expected to create an abusive environment.

3) Reprisal or Retaliation occurs when any person in a position of authority threatens to use or uses that authority to –

- a) retaliate against an individual who has rejected his/her sexual advances or unwelcome sexual behavior.; or
- b) retaliate against an individual who has brought a complaint pursuant to this policy or participated in an investigation / hearing of such a complaint.

4) Sexist harassment or harassment on the basis of sexual preference. - Sexist behavior and conduct which arises from discrimination against individuals on the basis of sexual preference constitute harassment when:

- a. it is unwelcome;
- b. it influences, either directly or indirectly, an individual's employment or training performance; and
- c. it has the purpose or effect of unreasonably interfering with an individual's work or training performance or creating an intimidating, hostile or offensive working, residential or training environment.

Examples of sexist harassment may include:

- gender stereotyping;
- offensive sexual jokes about a gay or lesbian colleague;
- inappropriate use of terms of endearment; or
- making assumptions about people because of their sex/gender.

FORMS OF SEXUAL MISCONDUCT AND SEXUAL HARASSMENT

ARTICLE 162. *Forms of Sexual Offenses.* - Sexual misconduct or sexual harassment may take the following forms, such as but not limited to the following examples:

(1) Physical

- (b) Unwelcome or offensive touching, directly or indirectly (i.e. coping a feel) of genitalia or any other sexualized body part; unwanted hugging, patting, pinching, kissing, or brushing up against someone's body, or other inappropriate sexual touching;
- (c) Overt sexual advances; or
- (d) Obscene gestures or body language with lewd insinuation.

(2) Verbal, such as but not limited to, requests or demands for sexual favors, sexually explicit or sexist comments or anecdotes;

(3) Visual, such as displaying sexually suggestive pictures, objects, graphics, posters, cartoons or calendars other than in appropriate academic study or investigative proceedings.

(4) Other forms analogous to the foregoing.

PLACE OF COMMISSION OF THE OFFENSE

ARTICLE 163. *Place of Commission.* - Sexual misconduct or sexual harassment may take place:

- (1) within company premises or inside the workplace, office or training venue;
- (2) in any place where the parties were found, regardless of whether or not they were there as a reason of work-related or training-related responsibilities or activities;
- (3) at company-sponsored activities, social functions, or athletic events;
- (4) at official conferences, fora, symposia or training sessions; or
- (5) by telephone, cellular phone, fax machine, or via electronic mail.

ARTICLE 164. *Work-related and Training-related sexual harassment.* -

(1) *Work-related sexual harassment* is committed under the following circumstances:

- a) Submission to or rejection of the act or series of acts is used as a basis for any employment decision (including, but not limited to, matters related to hiring, promotion, raise in salary, job security, benefits and any other personnel action) affecting the applicant/ employee;
- b) The act or series of acts have the purpose or effect of interfering with the employee's work performance, or creating an intimidating, hostile, or offensive environment for the employee.
- c) The act or series of acts might reasonably be expected to cause discrimination, insecurity, discomfort, offense or humiliation to a complainant who may be a co-employee, applicant or customer of the person complained of; or

(2) *Education or training-related sexual harassment* is committed against one who is under the actual or constructive care, custody or supervision of the offender, or against one whose training or apprenticeship is directly or constructively entrusted to, or is provided by, the offender, when:

- a) Submission to or rejection of the act or series of acts is used as a basis for any decision affecting the complainant, including, but not limited to the giving of any benefit, privilege or consideration;
- b) The act of series of acts have the purpose or effect of interfering with the performance, or creating an intimidating, hostile or offensive environment for the complainant; or
- c) The act or series of acts might reasonably be expected to cause discrimination, insecurity, discomfort, offense or humiliation to a complainant who may be a trainee, apprentice, intern, tutee or ward of the person complained of.

CLASSIFICATION OF ACTS OF SEXUAL HARASSMENT

ARTICLE 165. *Classes of Acts of Sexual Harassment.* - Sexual harassment is classified as grave, less grave and light offenses.

A. **GRAVE OFFENSES** shall include but are not limited to:

1. Offensive touching an unwilling person's breasts, buttocks, genitalia, groin, inner thigh or any sexualized body part, either directly or indirectly (i.e. coping a feel);

2. Unwelcome sexual advances and other lewd conduct that creates an intimidating, hostile or humiliating working or training environment;
3. Unwanted kiss on another person's lips;
4. Encouraging one to masturbate in the presence of the inducer, or masturbation by an employee while another is present;
5. Displaying, licking, fondling, sucking or manipulating a dildo, phallic sculpture or replica of a person's genitalia, or other sex toys and similar objects in the presence of the victim;
6. Sexual demands by the same or opposite sex in exchange for employment, promotion, local or foreign travels, favorable working conditions or assignments, or the grant of benefits; and
7. Other analogous cases.

B. LESS GRAVE OFFENSES shall include but are not limited to:

1. Offensive hugging, patting, pinching, or brushing up against someone's body;
2. Unwelcome leaning over or cornering;
3. Unwelcome kiss other than planting a kiss on another person's lips;
4. Derogatory or degrading remarks or innuendoes directed toward the members of one sex or one's sexual orientation or used to describe a person;
5. Name-calling or pranks with demeaning terminology or lewd connotation;
6. Verbal abuse or threats with sexual overtones; and
7. Other analogous cases.

C. LIGHT OFFENSES shall include but are not limited to:

1. Surreptitiously and maliciously looking or stealing a look at a person's private part or worn undergarments;
2. Malicious leering, wolf whistles, catcalls or ogling;
3. Telling sexist/smutfy jokes or sending these through text, electronic mail or other similar means, causing embarrassment or offense and carried out after the offender has been advised that they are offensive or embarrassing, or even without such advice, when they are by their nature clearly embarrassing, offensive or vulgar;
4. Displaying sexually offensive pictures, materials or graffiti; for no legitimate purpose;
5. Unwelcome inquiries or comments about a person's sex life;

- 6. Unwelcome sexual flirtation or persistent pressure for a date;
- 7. Making offensive hand or body gestures;
- 8. Persistent unwanted attention with sexual overtones;
- 9. Unwelcome phone calls with sexual overtones causing discomfort, embarrassment or offense or insult to the receiver; and
- 10. Other analogous cases.

PERSONS LIABLE FOR SEXUAL OFFENSES

ARTICLE 166. Who are liable. - Any officer or employee, regardless of sex, is liable for sexual misconduct or sexual harassment when the it has been proven that the offender committed any of the following acts, to wit:

- (a) directly participates in the execution of any act of sexual misconduct or sexual harassment as defined by these Rules;
- (b) induces or directs another or others to commit sexual misconduct or sexual harassment as defined by these Rules;
- (c) cooperates in the commission of sexual misconduct or sexual harassment by another through an act without which such offense would not have been accomplished;
- (d) aids or abets the commission of the offense by another through previous or simultaneous acts; or
- (e) although possessing the obligation and the authority to prevent or take remedial action against the commission of the offense, shall fail to act accordingly.

CORRECTIVE ACTIONS / PENALTIES

ARTICLE 167. Imposable Penalties for Sexual Offenses. - (1) Any person who is found guilty of a sexual offense as defined herein shall, after the formal investigation, be meted the penalty corresponding to the gravity or seriousness of the offense proved.

The penalties for sexual offenses are as follows:

SEXUAL OFFENSE	LEVEL OF OFFENSE	CORRECTIVE ACTION / PENALTY
Grave sexual harassment	1st Offense	Dismissal
Less grave sexual harassment	1st Offense	Fine or suspension (not more than thirty (30) days and not exceeding six (6) months
	2nd Offense	Dismissal

Light sexual harassment	1st Offense	Written Reprimand
	2nd Offense	Fine or suspension not exceeding thirty (30) days
	3rd Offense	Dismissal
Sexual assault	1st Offense	Dismissal
Sexual violation	1st Offense	Fine or suspension not more than thirty (30) days and not exceeding six (6) months
	2nd Offense	Dismissal
Sexual impropriety	1st Offense	Written Reprimand
	2nd Offense	Fine or suspension not exceeding thirty (30) days
	3rd Offense	Dismissal

If the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed shall be that corresponding to the **most serious charge or count** and the rest shall be considered as **aggravating circumstances**.

THE COMMITTEE ON DECORUM AND ETHICS

ARTICLE 168. Functions. - The Committee on Decorum and Ethics (CODE) shall perform the following functions:

- (a) Receive complaints of sexual misconduct, sexual harassment and retaliation;
- (b) Investigate complaints of sexual misconduct, sexual harassment and retaliation in accordance with the prescribed procedure;
- (c) Submit a report of its findings and recommendations to the disciplining authority for decision;
- (d) Conduct Sexual Misconduct and Sexual Harassment Awareness Training with the end in view of sensitizing all employees on what constitutes these offenses and making all employees aware of reporting and investigation procedures.
- (e) Forge cooperative arrangements with institutions, government agencies and instrumentalities, and people's organizations in order to heighten awareness in preventing workplace discrimination, sexual misconduct and sexual harassment, and assuring proper investigation, prosecution and resolution of such cases.

ARTICLE 169. Exclusive Original Jurisdiction. - The Committee on Decorum and Ethics (CODE) shall exercise exclusive original jurisdiction over the investigation / hearing of all cases of sexual

misconduct and sexual harassment in the corporate offices and all casino branches, VIP clubs / slot machine arcades, satellite casinos, economic zone licensed casinos, bingo venues, and field establishments (e.g. warehouses) of PAGCOR.

Only the determination and findings made by the Committee on Decorum and Ethics (CODE) with respect to an act constituting sexual misconduct or sexual harassment shall be recognized.

All cases involving sexual harassment or sexual misconduct which had been filed with the any committee, department/unit, or any officer of PAGCOR shall be referred to the Committee on Decorum and Ethics (CODE) regardless of the stage of its investigation or proceedings.

If upon the consideration of the facts and surrounding circumstances, the CODE finds that the case falls outside the definition of either sexual misconduct or sexual harassment, it shall remand the case to the proper body for investigation or proper disposition.

ARTICLE 170. Appointment of Committee Members. – All members of the Committee on Decorum and Ethics (CODE) shall be appointed by the Board of Directors.

ARTICLE 171. Composition. - The Committee on Decorum and Ethics (CODE) shall have equitable representation from first-level employees, supervisory employees and officers of the Company. The Committee shall be composed of the following:

- a. the **Chairperson**, who shall act as the Presiding Officer;
- b. the **voting members** composed of representatives from first-level employees, supervisory employees and officers.
- c. the **Non-voting members** composed of the following:
 - (1) the **Affirmative Action Officer**, who shall administer the oath upon the parties and witnesses, and act as prosecutor;
 - (2) the **Ombudsman**, who shall conduct the preliminary investigation and act as prosecutor; and
 - (3) the **Executive Clerk**, who shall perform the following duties and responsibilities:
 - a) keep in her care and custody the record of the case, together with all the books necessary for the documentation of the proceedings, files and exhibits;
 - b) serve parties and witnesses notices of hearings, meetings or conferences;
 - c) prepare calendars and minutes of sessions;
 - d) transmit the Committee Report to the Adjudication Committee; and
 - e) perform such other functions as may be directed by the Committee.

ARTICLE 172. Qualification of Committee Members. – All members, voting and non-voting, of the Committee on Decorum and Ethics shall be persons of known probity, integrity and competence; Provided, however, that such members shall be of regular status in PAGCOR.

ARTICLE 173. Quorum and Vote. - The presence of a majority of the members of the Committee on Decorum and Ethics shall constitute a quorum to do business.

The Chairperson and each member of the Panel shall be entitled to one (1) vote.

The Chairperson and members of the Committee shall personally cast their votes. Voting by proxy or thru a representative shall not be valid.

ARTICLE 174. Per Diems and Emoluments for Members. - All members, voting and non-voting, of the Committee on Decorum and Ethics (CODE) shall receive per diems, honoraria or allowances for every investigation / hearing / meeting actually attended.

PRE-FILING STANDARD OPERATING PROCEDURES IN ATTENDING TO VICTIMS OF SEXUAL OFFENSES

ARTICLE 175. The Pre-filing Stage. - The Committee on Decorum and Ethics may adopt mechanisms to provide assistance to an alleged victim of sexual harassment which may include counseling, referral to an agency offering professional help, and advice on options available before the filing of the complaint.

PRE-CHARGE INVESTIGATION

ARTICLE 176. The Complaint or the Incident Report. - An inquiry by the Ombudsman of the Committee on Decorum and Ethics (CODE) shall commence upon the filing of an affidavit-complaint by the aggrieved party.

The aggrieved party may seek assistance from –

- a. his/her immediate supervisor;
- b. the Head of the Department / Unit / Division / Section;
- c. the Human Resource Officer of the branch; or
- d. the Ombudsman, the Affirmative Action Officer, or any member of the Committee on Decorum and Ethics.

The following communications do not constitute a complaint and will not be acted upon:

- a. Oral allegations;
- b. Telegram and radiogram;
- c. Electronic mail; or
- d. Inquiry or pre-complaint consultation that seek advice or information only.

C. No anonymous complaint shall be entertained unless there is obvious truth or merit to the allegations therein or supported by documentary or direct evidence, in which case the person complained of may be required to comment.

The complaint must in writing, signed and sworn to by the complainant. It shall contain the following:

- a] Full name and address of the complainant;
- b] Name, position and place of assignment of the employee complained of;
- c] A narration of the relevant and material facts describing the specific act as allegedly committed by the employee complained of;
- d] Evidence, in support of the complaint, if any;
- e] A certification of non-forum shopping.

Where the complaint is not under oath, the complainant shall be summoned by the Committee to swear to the truth of the allegations in the complaint.

The Complaint/Disclosure Form (**Annex "H"**) shall be attached to the verified complaint.

ARTICLE 177. *Withdrawal of the Complaint.* - Withdrawal of the complaint at any stage of the proceedings or the execution of an affidavit of desistance by the complainant shall not preclude the Committee from proceeding with the investigation where there is obvious truth or merit to the allegations in the complaint or where there is documentary or direct evidence that can prove the guilt of the person complained of.

ARTICLE 178. *Protection Against False or Vexatious Complaints.* - False, malicious or unfounded accusations, including the repeated filing of frivolous complaints, may be proceeded against and may result in the imposition of sanctions against the complainant by the disciplining authority.

ARTICLE 179. *Action on the Complaint.* - Upon receipt of a complaint that is sufficient in form and substance, the Ombudsman shall issue a **show-cause memorandum** directing the person complained of to submit a **Counter-Affidavit/Comment under oath** within three (3) days from receipt of the notice, furnishing a copy thereof to the complainant; otherwise, the Counter-Affidavit/Comment under oath shall be considered as not filed.

ARTICLE 180. *Preliminary Investigation.* - A preliminary inquiry is the first step in the resolution process after allegations of sexual misconduct or sexual harassment are reported through proper channels. Its purposes are to:

- a. ascertain the facts and circumstances;
- b. determine whether or not a *prima facie* case exists to warrant the issuance of a formal charge; and
- c. advise the complainant of resolution options.

During the preliminary investigation, the parties may submit their respective affidavit/s and counter-affidavit/s. Witnesses, if any, may be summoned by the Ombudsman to thresh out evidentiary matters and propound clarificatory and other relevant questions.

Upon receipt of the Counter-affidavit/Comment under oath, the Ombudsman may recommend whether a *prima facie* case exists to warrant the issuance of a formal charge. In the absence of a *prima facie* case, the complaint shall be dismissed summarily.

If the Ombudsman cannot reasonably determine that the alleged incident(s) occurred, or that it/they did not constitute a sexual offense, the Ombudsman will communicate this to the complainant. Some form of intervention may occur at this point in an attempt to resolve any misperceptions or misunderstandings, or deal with allegations of conduct which may be improper but not harassment. Allegations of misconduct which are serious but not considered harassment may be handled through applicable processes outlined in the PAGCOR Code of Discipline.

ARTICLE 181. *Duration of the Investigation.* - A preliminary investigation shall commence not later than five (5) days from receipt of the complaint by the Ombudsman of the Committee on Decorum and Ethics and shall be terminated within fifteen (15) working days thereafter.

THE CHARGE SHEET

ARTICLE 182. *Formal Charge.* - If, after the preliminary investigation, there is *prima facie* evidence showing that the suspect is probably guilty of the act complained of, the Ombudsman of the Committee on Decorum and Ethics (CODE) shall recommend to the Chairman/President of PAGCOR the issuance of a formal charge to the person complained of.

The **Formal Charge** shall state the following:

- a) The specific offense(s), as defined under the PAGCOR Code of Discipline;
- b) A brief statement of material or relevant facts which must answer the following questions:
 - 1) Who committed the alleged offense?
 - 2) What actually happened?
 - 3) When / Where / How did it happen?
 - 4) Witnesses, if any?
- c) Sworn statements covering the testimony of witnesses;
- d) An **Order to Explain** requiring the respondent to file his **Answer under oath** within seventy-two (72) hours from receipt thereof;
- e) An advice for the respondent to indicate in his Answer whether or not he/she elects a formal investigation; and
- f) A notice that he/she is entitled to be accompanied or assisted by a counsel (i.e. lawyer) of his / her choice; however, he/she (i.e. respondent) must personally appear during the hearing. Counsel shall not be entertained unless the respondent himself/herself is present, and respondent's absence shall be deemed a waiver of his/her right to appear before the Committee on Decorum and Ethics (CODE).

If the respondent has submitted his/her comment and counter-affidavit/s during the preliminary investigation, he/she shall be given the opportunity to submit additional evidence.

ARTICLE 183. Prohibited pleadings/motions. - The Committee on Decorum and Ethics shall not entertain requests for clarification, bills of particulars or motions to dismiss which are obviously designed to delay the administrative proceeding. If any of these pleadings or motions is filed by the respondent, the same shall be considered as part of his/her answer.

ARTICLE 184. Answer. – The answer, which must be in writing and under oath, shall be specific and shall contain material facts and applicable laws, if any, including documentary evidence, sworn statements covering testimonies of witnesses, if there be any, in support of the respondent's defense.

The answer shall include a statement indicating whether he/she elects a formal investigation.

ARTICLE 185. Failure to File an Answer. - Failure of the respondent to file his/her answer to the formal charges within seventy-two (72) hours from receipt thereof without justifiable cause shall be considered as a general denial of the charge and deemed a waiver of his/her right thereto. Accordingly, formal investigation may commence.

ARTICLE 186. Preventive Suspension. –

A. Effect of preventive suspension. - Preventive suspension pending investigation is not a corrective action/penalty. It is a means, and no more, to prevent the respondent from hampering the normal course of the investigation with his influence and authority over possible witnesses and to keep him off the records and other evidence. That said, preventive suspension is separate and distinct from disciplinary suspension.

The period wherein the respondent was under preventive suspension, which shall not exceed ninety (90) days, shall not be deducted from the period of disciplinary suspension meted upon him.

B. Duration of Preventive Suspension. – When the administrative case against an officer or employee under preventive suspension is not finally decided by the disciplining authority within ninety (90) days from the date of issuance of the order to that effect, he shall be automatically reinstated in the service; **Provided** that, when the delay in the disposition of the case which is due to the fault, negligence or petition of the respondent, the period of delay shall not be included in the counting of the

ninety (90) calendar days of preventive suspension; **Provided further** that, should the respondent be on maternity/paternity Leave, said preventive suspension shall be deferred until such time that said leave has been fully enjoyed.

C. Requirements for Imposition of Preventive Suspension. – Preventive suspension may be imposed only if **ALL** the following requirements concur:

- 1) An order of preventive suspension may be issued by the Chairman/President of PAGCOR upon the recommendation of the Ombudsman and Chairperson of the Committee on Decorum and Ethics. Such order shall be subject to approval by the Board of Directors.
 - 2) The sole purpose for the issuance of an order of preventive suspension pending investigation is to preclude the respondent from exerting undue influence or pressure on the witnesses against him or to prevent him from tampering evidence on file with his office.
- D. The formal charge, including the particulars or reason therefor, must have been served upon the respondent.
- E. The formal charge relates to an act constitutive of –
- (a) Grave sexual harassment (*First Offense*);
 - (b) Less grave sexual harassment (*Second Offense*);
 - (c) Light sexual harassment (*Third Offense*);
 - (d) Sexual assault (*First Offense*);
 - (e) Sexual violation (*Second Offense*); or
 - (f) Sexual impropriety (*Third Offense*).

D. No back salaries during Preventive Suspension. - No back salaries shall be awarded to the respondent during the period he was placed under **preventive suspension pending investigation**.

ARTICLE 187. Investigation Report. - Within a reasonable time following the completion of the pre-charge investigation, the Ombudsman of the CODE shall draft a report containing a narration of the material facts established during the investigation, the evidence supportive of its findings, the legal basis, as well as its recommendations.

FORMAL INVESTIGATION

ARTICLE 188. Formal Investigation by the Committee on Decorum and Ethics (CODE) - Within five (5) days after receipt of the Investigation Report, the Committee on Decorum and Ethics (CODE) shall conduct a formal hearing. The Executive Clerk of the Committee shall set the hearing and duly notify the parties and members of the Committee.

The Ombudsman and/or the Affirmative Action Officer of the Committee shall act as the prosecutors during the hearings.

The order of hearing shall be as follows:

- a) The Ombudsman and/or the Affirmative Action Officer shall adduce evidence with proper identification and marking of exhibits.
- b) The respondent shall then present evidence in support of his defense with proper identification and marking of his exhibits.
- c) The proceedings being summary in nature, direct examination of witnesses may be dispensed with, and the sworn statements/affidavits of witnesses, after proper identification and affirmation on the truth of the contents thereof, shall take the place of their oral testimony;

d) Clarificatory examination, if requested by either party, shall be confined to material and relevant matters and, insofar as may be compatible with the ends of justice, shall be limited to no more than fifteen (15) minutes for each witness.

Following the presentation of evidence, the parties may be given time to submit their respective position paper / memorandum within a non-extendible period of five (5) days after the termination of the hearings. Failure to submit the same within the prescribed period shall be considered a waiver thereof.

ARTICLE 189. *Pre-hearing Conference.* – At the commencement of the formal investigation, the Committee on Decorum and Ethics may conduct a pre-hearing conference for the parties to appear, consider and agree on any of the following:

- a) stipulation of facts;
- b) identification and marking of evidence of the parties;
- c) waiver of objections to admissibility of evidence;
- d) limiting the number of witnesses, and their names;
- e) dates of subsequent hearings; and
- f) such other matters as may aid in the prompt and just resolution of the case.

The parties may submit position papers/memoranda and submit the case for resolution based on the result of the pre-hearing conference without any need for further hearing.

ARTICLE 190. *Conduct of hearing.* –

190.1 Nature of Proceedings. – The proceedings before the Committee on Decorum and Ethics (CODE) shall be non-litigious and summary in nature. The trial-type hearing practiced in courts shall not be used. The rules of procedure and evidence prevailing in courts of law and equity shall not be controlling and the Committee may avail of all reasonable means to ascertain the truth and to resolve the case in a fair and expeditious manner.

190.2 Hearing Dates. - The schedule of hearings shall be followed strictly without further notice. Only one (1) postponement shall be granted upon written request actually received by the Executive Clerk of the Committee on Decorum and Ethics (CODE) three (3) calendar days before the scheduled hearing.

If the respondent fails to appear during the scheduled hearing despite due notice, the investigation shall proceed *ex parte* and the respondent shall be deemed to have waived his/her right to be present and to submit evidence in his/her favor during the hearing.

If a respondent appears without the aid of a counsel/ advisor, he/she shall be deemed to have waived his right thereto.

190.3 The Hearing Proper. - The Chairperson of the Committee on Decorum and Ethics (CODE) shall exercise complete control of the proceedings at all stages. He/she shall take full control of the proceedings, examine the parties and their witnesses to satisfy himself/herself with respect to the matters at issue, and may allow the parties or their counsel to ask questions only for the purpose of clarifying points of law or fact involved in the case. He/she shall limit the presentation of evidence to matters relevant to the issue before him/her and necessary for a just and speedy disposition of the case.

The Committee on Decorum and Ethics (CODE) shall conduct a closed and confidential session. It shall have the authority to summon the concerned employee, witnesses, or resource person and to request production of evidence pertinent to the inquiry.

The following **ground rules** shall be observed:

- 1) The Chairperson of the Committee on Decorum and Ethics (CODE) shall preside over its sessions.
- 2) Before taking the testimony of a witness, the Committee on Decorum and Ethics shall place him/her under oath.
- 3) Continuous sessions shall be conducted to assure the speedy resolution of the case. Delays shall not be permitted except under exceptional circumstances.
- 4) Besides the Ombudsman and the Affirmative Action Officer, any member of the Committee on Decorum and Ethics (CODE) may question the party or the witness.
- 5) Witnesses may be excluded during the testimony of any party or other witness. The Chairperson shall exercise reasonable control over the order and number of witnesses to be heard.
- 6) All witnesses shall testify in person. All persons who are summoned to testify before the Committee on Decorum and Ethics (CODE) to shed light to the circumstances of the case must personally appear. Inexcusable failure on the part of any employee who, despite due notice, failed or refused to appear before the Committee may be subjected to disciplinary action.
- 7) The strict rules of evidence shall not apply but the rules of courtesy and respect shall apply.
- 8) After the complainant and/or the Ombudsman has presented evidence in support of the charge, the respondent(s) shall be given an opportunity to offer evidence in support of his/her defense. The complainant and/or the Ombudsman may then offer rebuttal evidence, and the respondent, sur-rebuttal evidence.
- 9) When all the presentation of evidence has been concluded, the parties shall formally offer their evidence either orally or in writing and thereafter, objections thereto may be raised. Thereafter, both parties may be given time to submit their respective memorandum.

190.4 Objections. – All objections raised during the hearing shall be resolved by the Presiding Officer of the Committee on Decorum and Ethics (CODE).

The Committee on Decorum and Ethics (CODE) shall accept all evidence deemed material and relevant to the case. In case of doubt, the Committee shall allow the admission of evidence subject to the objection interposed against its admissibility.

190.5 Markings. – All documentary evidence or exhibits shall be properly marked by letters (A, B, C, etc.) if presented by the **complainant** and by numbers (1, 2, 3, etc.) if presented by the **respondent**. These shall form part of the complete records of the case.

190.6 Request for Subpoena. – If a party desires the attendance of a witness or the production of documents or things, he/she shall make a request for the issuance of the necessary subpoena, at least three (3) days before the scheduled hearing.

190.7 Issuance of Subpoena. – The Committee on Decorum and Ethics may issue subpoena *ad testificandum* to compel the attendance of witnesses and subpoena *duces tecum* for the production of documents or objects.

190.8 Records of Proceedings. – The proceedings of the formal investigation must be recorded either through shorthand, stenotype, audiotape, or any other method.

190.9 The Committee's Action. The actions of the Committee on Decorum and Ethics (CODE) shall be by majority vote of the members actually present therein. The Panel may:

- (a) Dismiss the case or the exonerate the respondent for insufficient evidence or for lack of merit;
- (b) Find the respondent guilty of the act(s) complained of, and recommend appropriate corrective actions / penalty;
- (c) Recommend to the Human Resource and Development Department (HRDD) personnel actions the Committee deems necessary to protect the offended party against potential reprisal or retaliation from the person complained of, and to assure the cessation of a hostile or offensive working environment;
- (d) Recommend to the Health Services Department (HSD) that the respondent and / or the offended party be subjected to psychological testing, or other medical intervention; or
- (e) Subject any of the parties or witnesses to polygraph testing, if the Committee deems it necessary.

190.10 Appearance of Advisor / Counsel. - An advisor / counsel may attend the hearing and sit near his/her advisee/client during the hearing; communicate quietly with the advisee/client during the hearing; and may respond to a direct question from the Committee on Decorum and Ethics (CODE). An advisor/counsel may not make an oral presentation at the hearing and may not submit a written request directly to the Committee, although an advisor may assist his/her advisee to prepare written submissions. An advisor may be an attorney or any other adult person.

Any counsel appearing before any hearing or investigation shall manifest orally or in writing, his appearance for either the respondent or the complainant, stating –

- a. his full name;
- b. Mailing address, which is not a post office box number, including the lawyer's telephone/cellular phone number and e-mail address, if available;
- c. Roll of Attorneys Number;
- d. IBP Official Receipt Number or IBP Lifetime Membership Number, including the date and place of issue;
- e. Current Professional Tax Receipt (PTR) Number, including the date and place of issue;
- f. Mandatory Continuing Legal Education (MCLE) Compliance or Exemption Certificate Number and the date of issue.

A non-lawyer who assists or accompanies a party shall show a special power of attorney authorizing such person to appear with such party. In case the party is out of the country and the advisor represents him, the special power of attorney must be authenticated by the consular office concerned and comply with other applicable formalities for their execution.

Any pleading or appearance of an advisor/counsel without complying with any of the above-stated requirements shall not be recognized.

190.11 Disruptive Behavior. – Disruptive behavior by any participant in the hearing is ground for expulsion from the hearing.

190.12 Witnesses. – The Committee on Decorum and Ethics (CODE) shall have the right to question any and all witnesses, to examine documentary evidence presented, and to call other witnesses. Witnesses shall not be present during the testimony of any party or other witness. The Committee shall exercise reasonable control over the order and number of witnesses to be heard.

190.13 Per diems. - Members of the Committee on Decorum and Ethics, including its Ombudsman, Affirmative Action Officer and Executive Clerk, who actually attended the meetings / hearings shall be entitled to per diems.

ARTICLE 191. *The Committee Report.* - Within thirty (30) days following the conclusion of the formal investigation, a report containing a narration of the findings of facts established during the investigation and hearings, the legal basis, as well as the recommendations of the Committee on Decorum and Ethics (CODE), shall be submitted to the Secretary of the Adjudication Committee. The complete record of the case shall be appended to the Report.

ARTICLE 192. *Elevation of the Case to the Adjudication Committee.* - The Report of the Committee on Decorum and Ethics (CODE), including the record of the case, shall be forwarded to the Adjudication Committee (AC) for automatic review.

The Adjudication Committee may affirm, modify or reverse the findings and conclusions of the Committee on Decorum and Ethics (CODE).

DECISION

ARTICLE 193. *When Case is Decided.* - The Board of Directors shall render its decision on the case within thirty (30) days from receipt of the Report of the Adjudication Committee.

ARTICLE 194. *Finality of the Decision.* - A decision rendered by the Board of Directors whereby a corrective action of suspension of not more than thirty (30) days is imposed, shall be final and executory.

If the corrective action imposed is suspension exceeding thirty (30) days, demotion or dismissal, the same shall be final and executory after the lapse of the reglementary period for filing a motion for reconsideration.

ARTICLE 195. *Service of Decision.* - The Decision shall be served either personally or by registered mail by the Human Resource and Development Department (HRDD) at respondent's place of assignment or at his last known address within three (3) days from rendition thereof.

In all cases, proof of such service shall be attached to the records for information and ready reference.

REMEDIES FROM ADVERSE DECISION

ARTICLE 196. *Motion for Reconsideration.* -

196.1 Deadline. - The party adversely affected by the decision may file a motion for reconsideration with the Board of Directors within fifteen (15) calendar days from receipt thereof.

No request for extension of the period within which to file a motion for reconsideration shall be allowed.

196.2 Procedure. - The following procedural sequence shall be followed:

1) Following receipt by the respondent of the decision of the Board of Directors, he may manifest his **intent to appeal** thru the form furnished by the HRDD.

2) Within fifteen (15) calendar days from the time the erring corporate employee was notified of the adverse decision, he shall file his **letter of request** (i.e. motion for reconsideration) with the office of the head of the Human Resource and Development Department (HRDD).

3) The HRDD shall –

a) transmit the appeal to the Adjudication Committee (AC), **AND**

b) certify that an appeal had been filed within the non-extendible period of fifteen (15) calendar days.

4) After deliberation on the merits of the appeal, the Adjudication Committee shall make its recommendation whether to grant or deny the appeal.

5) The recommendation of the Adjudication Committee shall be forwarded to the Board of Directors for resolution.

196.3 Limitations. - The filing of a motion for reconsideration shall be limited exclusively to the following **grounds**:

1) Newly discovered evidence which materially affects the decision rendered;

2) The decision is not supported by the evidence on record; or

3) Errors of law or irregularities have been committed prejudicial to the interest of the movant.

Only one (1) motion for reconsideration shall be entertained. If a second motion for reconsideration is filed notwithstanding its prohibition under these Rules, the finality of action shall be reckoned from the denial of the first motion for reconsideration.

196.4 Effect of filing. – The filing of a motion for reconsideration within the reglementary period of fifteen (15) days shall stay the execution of the decision sought to be reconsidered.

ARTICLE 197. Filing of Appeal. - A decision of the Board of Directors of PAGCOR imposing a penalty exceeding thirty (30) days suspension may be appealed to the Civil Service Commission (CSC) Proper within fifteen (15) days from receipt thereof.

An appeal shall not stop the decision from being executory, and in case the penalty is suspension exceeding thirty (30) days or dismissal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal, in the event he wins the appeal.

PROHIBITION AGAINST RETALIATION

ARTICLE 198. Retaliation Prohibited. - Any officer, trainor or employee who retaliates in any way against an individual who has brought a complaint pursuant to this policy or participated in an investigation of such a complaint, is subject to disciplinary action, up to and including dismissal from PAGCOR.

Swift and appropriate action will be taken against any employee who is found to have retaliated against any other member of the PAGCOR community because he/she reported sexual harassment or sexual misconduct, assisted in the investigation of such complaint, or testified or otherwise participated in a proceeding or hearing relating to an allegation of sexual harassment or sexual misconduct. Retaliation may include, but is not limited to, any form of hostility, intimidation, reprisal or harassment.

FORUM SHOPPING

ARTICLE 199. Anti- Forum shopping. - Under the same set of ultimate facts, the filing of a complaint based on PAGCOR's rules on sexual offenses shall preclude the filing of another administrative complaint under any other law.

TITLE VIII
COMMON PROVISIONS

ARTICLE 200. Classification of Offenses. - In order to effectively implement the provisions of this Code, offenses that incur disciplinary action are classified under five (5) types of heading: Type **A**, Type **B**, Type **C**, Type **D**, and Type **E**. This classification is made in accordance with the disciplinary action that the offense merits. The corresponding disciplinary actions for each of the above are the following:

TYPE OF OFFENSE	LEVEL OF OFFENSE	CORRECTIVE ACTION / PENALTY
A	Refer to Book I of the Code of Discipline (i.e. Procedural Deviations)	
B	1 st	Written Reprimand
	2 nd	Suspension (1 to 30 days)
	3 rd	Dismissal
C	1 st	Suspension (1 month, 1 day to 6 months)
	2 nd	Dismissal
D	1 st	Suspension (6 months, 1 day to 1 year)
	2 nd	Dismissal
E	1 st	Dismissal

A. The following are classified as Type **E** offenses:

1. Serious dishonesty;
2. Gross neglect of duty;
3. Grave misconduct;
4. Being notoriously undesirable;
5. Disgraceful and immoral conduct;
6. Conviction of a crime involving moral turpitude;
7. Falsification of official document;
8. Physical or mental incapacity or disability due to immoral or vicious habits;
9. Receiving for personal use of a fee, gift or other valuable thing in the course of official duties or in connection therewith when such fee, gift or other valuable thing is given by any person in the hope or expectation of receiving a favor or better treatment than that accorded to other persons, or committing acts punishable under the anti-graft laws;
10. Contracting loans of money or other property from persons with whom the office of the employee has business relations;

11. Soliciting or accepting directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value which in the course of his official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of his office. The propriety or impropriety of the foregoing shall be determined by its value, kinship, or relationship between giver and receiver and the motivation. A thing of monetary value is one which is evidently or manifestly excessive by its very nature;
12. Nepotism;
13. Disloyalty to the Republic of the Philippines and to the Filipino people;
14. Grave sexual harassment; and
15. Sexual assault.

B. The following are classified as Type **D** offenses:

1. Less serious dishonesty;
2. Oppression;
3. Disgraceful and immoral conduct;
4. Inefficiency and incompetence in the performance of official duties;
5. Frequent unauthorized absences, or tardiness in reporting for duty, loafing from duty during regular office hours.
6. Refusal to perform official duty.
7. Gross insubordination.
8. Conduct prejudicial to the best interest of the service.
9. Directly or indirectly having financial and material interest in any transaction requiring the approval of his office. Financial and material interest is defined as pecuniary or proprietary interest by which a person will gain or lose something;
10. Owning, controlling, managing or accepting employment as officer, employee, consultant, counsel, broker, agent, trustee, or nominee in any private enterprise regulated, supervised or licensed by his office, unless expressly allowed by law;
11. Disclosing or misusing confidential or classified information officially known to him by reason of his office and not made available to the public, to further his private interests or give undue advantage to anyone, or to prejudice the public interest;
12. Obtaining or using any statement filed under the Code of Conduct and Ethical Standards for Public Officials and Employees for any purpose contrary to morals or public policy or any commercial purpose other than by news and communications media for dissemination to the general public;
13. Recommending any person to any position in a private enterprise which has a regular or pending official transaction with his office, unless such recommendation or referral is mandated by (1) law, or (2) international agreements, commitment and obligation, or as part of the function of his office;
14. Less grave sexual harassment; and
15. Sexual violation.

C. The grave offense of **inefficiency** and **incompetence in the performance of official duties** is punishable by **Demotion**. In this case, the guilty person shall be appointed to the next lower position to which he/she is qualified in the plantilla of the agency. In case there is no such next lower position available, he/she shall suffer diminution in salary corresponding to the next lower salary grade.

D. The following are classified as Type **C** offenses:

1. Simple dishonesty;
2. Simple neglect of duty;
3. Simple misconduct;
4. Gross discourtesy in the course of official duties;
5. Insubordination;
6. Habitual drunkenness;
7. Unfair discrimination in rendering public service due to party affiliation or preference;
8. Failure to file sworn statements of assets, liabilities and net worth, and disclosure of business interest and financial connections, including those of their spouses and unmarried children under eighteen (18) years of age living in their households;
9. Failure to resign from his position in the private business enterprise within thirty (30) days from assumption of public office when conflict of interest arises, and/or failure to divest himself of his shareholdings or interests in the private business enterprise within sixty (60) days from such assumption of public office when conflict of interest arises, Provided, however, that for those who are already in the service and a conflict of interest arises, the official or employee must either resign or divest himself of said interests within the periods herein-above provided, reckoned from the date when the conflict of interest had arisen;
10. Engaging directly or indirectly in partisan political activities by one holding non-political office;
11. Light sexual harassment; and
12. Sexual impropriety.

E. The following are classified as Type **B** offenses:

1. Simple discourtesy in the course of official duties;
2. Improper or unauthorized solicitation of contributions from subordinate employees;
3. Violation of reasonable office rules and regulations;
4. Habitual tardiness;
5. Gambling prohibited by law;
6. Refusal to render overtime service;
7. Disgraceful, immoral or dishonest conduct prior to entering the service;
8. Borrowing money by a superior officer from subordinates.
9. Willful failure to pay just debts or willful failure to pay taxes due to the government;
10. Lobbying for personal interest or gain in legislative halls and offices without authority;
11. Promoting the sale of tickets on behalf of private enterprises that are not intended for charitable or public welfare purposes and even in the latter cases, if there is no prior authority;

12. Failure to act promptly on letters and requests within fifteen (15) days from receipt, except as otherwise provided in the rules implementing the Code of Conduct and Ethical Standards for Public Officials and Employees;
13. Failure to process documents and complete action on documents and papers within a reasonable time from preparation thereof, except as otherwise provided in the rules implementing the Code of Conduct and Ethical Standards for Public Officials and Employees;
14. Failure to attend to anyone who wants to avail himself of the services of the office, or act promptly and expeditiously on public transactions.
15. Engaging in private practice of his profession, unless authorized by the Constitution, law or regulation, provided that such practice will not conflict with his official functions.
16. Pursuit of private business, vocation or profession without the permission required by Civil Service rules and regulations.

ARTICLE 201. *Procedural Deviations.* – Procedural deviations, as defined and penalized under Book I of the Code of Discipline shall be classified as Type **A** offenses. The imposable corrective action/penalty prescribed thereunder shall be applied in accordance with these Rules.

ARTICLE 202. *Administrative Liability.* - Any officer or employee of the Philippine Amusement and Gaming Corporation (PAGCOR) shall be held accountable for a violation of the PAGCOR Code of Discipline whenever the offender:

- a) actually and directly participated in the execution of the offense;
- b) induced, authorized or directed another or others to commit an offense;
- c) cooperated in the commission of an offense through an act without which such offense would not have been accomplished;
- d) aided or abetted the commission of the offense by another through previous or simultaneous acts;
- e) profited or gained from the effects of the offense;
- f) helped in the concealment of the offense or made it difficult to be discovered; or
- g) although possessing the obligation and the authority to prevent or take remedial action against the commission of the offense, shall fail to act accordingly.

ARTICLE 203. *Conspiracy.* -

203.1 A person shall be proceeded against as a conspirator whenever the following elements concur:

- 1) two or more persons come to an agreement concerning the commission of an offense; and
- 2) the persons conniving to commit the offense actually participated in the commission of the offense, cooperated or gave moral assistance in furtherance of the agreement.

203.2 An agreement constituting a conspiracy may be inferred from the concerted acts of the parties.

203.3 It is not a defense to prosecution for conspiracy under this section that:

- 1) any of the co-conspirators is not held administratively responsible for the object offense;
- 2) any of the co-conspirators has been exonerated, so long as at least two co-conspirators have been found guilty;

- 3) one or more of the co-conspirators –
 - a) has not been prosecuted or found guilty,
 - b) has been found guilty of a different offense, or
 - c) is immune from prosecution; or
- 4) the object offense was not actually committed.

ARTICLE 204. *Standard of Evidence.* - Substantial Evidence is the standard to be used in deciding the case. Substantial Evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

ARTICLE 205. *Acts of Dishonesty.* -

205.1 The classification of the offense of dishonesty and their corresponding corrective actions / penalties are as follows:

- a] **Serious Dishonesty** which is classified as a Type **E** offense;
- b] **Less Serious Dishonesty** which is classified as a Type **D** offense;
- c] **Simple Dishonesty** which is classified as a Type **C** offense.

205.2 The presence of **ANY** one of the following attendant circumstances in the commission of the dishonest act would constitute the offense of **SERIOUS DISHONESTY**:

- a] The dishonest act caused serious damage and grave prejudice to the Company;
- b] The respondent gravely abused his authority in order to commit the dishonest act;
- c] Where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and the respondent shows an intent to gain;
- d] The dishonest act exhibits moral depravity on the part of the respondent;
- e] The respondent employed fraud or falsification of official documents in the perpetration of the dishonest act related to his employment;
- f] The dishonest act was committed several times or on various occasions;
- g] Other analogous circumstances.

205.3 The presence of **ANY** of the following attendant circumstances in the commission of the dishonest act would constitute the offense of **LESS SERIOUS DISHONESTY**:

- a] The dishonest act caused damage and prejudice to the Company which is not so serious as to qualify under Serious Dishonesty;
- b] The respondent did not take advantage of his position in committing the dishonest act;
- c] Other analogous circumstances.

205.4 The presence of **ANY** of the following attendant circumstances in the commission of the dishonest act would constitute the offense of **SIMPLE DISHONESTY**:

- a] The dishonest act did not cause damage or prejudice to the Company;

- b] The dishonest act has no direct relation to or does not involve the duties and responsibilities of the respondent;
- c] In falsification of any official document, where the information falsified is not related to his employment;
- d] That the dishonest act did not result in any gain or benefit to the offender;
- e] Other analogous circumstances.

ARTICLE 206. *Disgraceful and Immoral Conduct.* - An act characterized as “disgraceful and immoral conduct” shall be governed by the following rules:

206.1. *Definition of Disgraceful and Immoral Conduct* - Disgraceful and Immoral Conduct refers to an act which violates the basic norms of decency, morality and decorum, and is abhorred and condemned by the society. It refers to conduct which is willful, flagrant or shameless, and which shows a moral indifference to the opinions of the good and respectable members of the community.

206.2. *Basis for Determination.* -

A. To constitute immorality, the totality of the facts and surrounding circumstances in a particular case must be evaluated in the light of prevailing norms of conduct and applicable laws.

B. Immorality is not confined to sexual matters, but includes any conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity and dissoluteness.

C. Any pronouncement that an activity constitutes “disgraceful and immoral conduct” under the contemplation of these rules must satisfy the test that such conduct is regulated on account of the concerns of public and secular morality, not on the basis of religious mores or cultural values.

206.3. *Complaint for Disgraceful and Immoral Conduct; Who may Initiate / File.* - A complaint for Disgraceful and Immoral Conduct may be initiated by the head of the agency or filed by any person against the parties involved, whether married or unmarried.

No anonymous complaint shall be entertained unless there is obvious truth or merit to the allegations therein or supported by documentary evidence or direct evidence, in which the person complained of may be required to comment.

206.4. *Complaint for Disgraceful and Immoral Conduct Against Unmarried Government Personnel.* - Unmarried government employees who do not have any existing legal impediment to contract marriage may not be made liable for the administrative offense of disgraceful and immoral conduct unless the conduct consists of immoral and deviant acts which are inherently forbidden by the basic norms of decency, morality and decorum, such as, but not limited to incest, pedophilia, exhibitionism and the like.

206.5. *Manner of Commission of the Offense.* - The acts constituting the offense of Disgraceful and Immoral Conduct may be committed in a scandalous or discreet manner, within or outside of the workplace.

206.6. *Illicit Relationship.* - Illicit relationship shall be considered disgraceful and immoral conduct whenever all of the following elements are present:

- a. The act complained of constitutes adultery or concubinage under Philippine criminal law.
 - 1) **Adultery.** - Adultery is committed by any married woman who shall have sexual intercourse with a man not her husband and by the man who has carnal knowledge of her, knowing her to be married, even if the marriage be subsequently declared void.

2) **Concubinage.** - Concubinage is committed by the husband in any of the following ways:

- i. Keeping a mistress in the conjugal dwelling;
- ii. Having sexual intercourse under scandalous circumstances with a woman who is not his wife;
- iii. Cohabit with his mistress in a place other than the conjugal dwelling.

“Scandalous circumstances” need not be actual sexual relations. It suffices if the act complained of offends public conscience, giving rise to general protest or criticism, such acts being imprudent, wanton and setting a bad example.

- b. An administrative complaint for illicit relationship is imprescriptible.
- c. The quantum of evidence required to prove the offense of illicit relationship is substantial evidence, that is, such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

206.7. Penal Provision. – Any first-time offender found guilty of Disgraceful and Immoral Conduct, a Type **E** offense, shall be dismissed from the service. This shall carry with it the forfeiture of retirement or separation benefits, and the perpetual disqualification for reemployment, unless otherwise provided in the decision.

ARTICLE 207. Mitigating, Aggravating, and Alternative Circumstances. - In the determination of the corrective actions / penalties to be imposed, mitigating, aggravating and alternative circumstances attendant to the commission of the offense shall be considered.

In the appreciation thereof, the qualifying circumstance must be invoked or pleaded by the proper party; otherwise, said circumstance shall not be considered in the imposition of the proper penalty. The disciplining authority, however, may, in the interest of substantial justice, take and consider these circumstances *motu proprio*.

207.1 The following **mitigating** circumstances shall be appreciated:

- a. Physical illness;
- b. Good faith;
- c. Admission;
- d. Sincere apology;
- e. Sufficient provocation;
- f. Creditable employment history;
- g. Humanitarian reasons;
- h. “First offense” circumstance; and
- i. Analogous circumstances.

The “First Offense” circumstance shall not be considered as a mitigating circumstance in an act or omission found constitutive of a **serious** offense.

207.2 The following **aggravating** circumstances shall be appreciated:

- a. Malice;
- b. Taking undue advantage of official position;
- c. Taking undue advantage of subordinate;
- d. Undue disclosure of confidential information;
- e. Use of government property in the commission of the offense;
- f. Employment of fraudulent means to commit or conceal the offense;
- g. Habituality;
- h. Offense is committed during office hours and within the premises of the office or building;
or
- i. Analogous circumstances.

207.3 The following **alternative** circumstances shall be appreciated:

- a. Education;
- b. Time and place of the offense; and
- c. Length of service.

ARTICLE 208. Manner of Imposition of the Appropriate Corrective Action/Penalty. -

208.1 In the imposition of **disciplinary suspension**, the following graduated scale shall be followed:

RANGE OF PENALTY	MANNER OF IMPOSITION
1 day to 10 days suspension	Minimum – 1 to 3 days Medium – 4 to 6 days Maximum – 7 to 10 days
11 days to 20 days suspension	Minimum – 11 to 13 days Medium -- 14 to 16 days Maximum – 17 to 20 days
21 days to 30 days suspension	Minimum – 21 to 23 days Medium -- 24 to 26 days Maximum – 27 to 30 days
1 day to 30 days suspension	Minimum - 1 to 10 days Medium - 11 to 20 days Maximum - 21 to 30 days
31 days to 180 days suspension (1 month, 1 day to 6 months)	Minimum – 31 to 80 days Medium -- 81 to 130 days Maximum -- 131 to 180 days
181 days to 360 days suspension (6 months, 1 day to 1 year)	Minimum -- 181 to 240 days Medium -- 241 to 300 days Maximum -- 301 to 360 days

208.2 The imposition of the penalty shall be made in accordance with the manner provided herein below:

a. The **minimum** of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.

b. The **medium** of the penalty shall be imposed where neither mitigating nor aggravating circumstances are present.

c. The **maximum** of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.

d. Where aggravating and mitigating circumstances are present, paragraph **[a]** shall be applied where there are more mitigating circumstances present; paragraph **[b]** shall be applied when the circumstances equally offset each other; and paragraph **[c]** shall be applied when there are more aggravating circumstances.

208.3 The imposable corrective action shall be that which in view of the attendant mitigating and aggravating circumstances, is **within the range** of the corrective action / penalty that could be properly imposed upon the guilty respondent.

208.4 In actually imposing the appropriate corrective action, the disciplining authority may take into consideration other relevant circumstances, such as but not limited to:

- 1) past commendation or achievement;
- 2) plea for leniency;
- 3) compassionate justice; and
- 4) potential for reform.

208.5 Although dismissal is an indivisible penalty, the disciplining authority may nonetheless consider mitigating circumstances in imposing the commensurate corrective action.

ARTICLE 209. *Penalty for the Most Serious Offense.* - If the respondent is found guilty of two (2) or more charges or counts, the corrective action / penalty to be imposed shall be that corresponding to the most serious charge or count and the rest shall be considered as aggravating circumstances.

ARTICLE 210. *Aggregation of Amounts.* - When amounts are claimed, attempted to be claimed, or obtained in violation of this Code of Discipline pursuant to one scheme or a continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the amounts aggregated in determining the classification or degree of the offense.

ARTICLE 211. *Duration, Effect and Application of Corrective Actions / Penalties.* - The following rules shall govern in the imposition of corrective actions / penalties:

- a. **Dismissal** shall result in the permanent separation of the respondent from the service, without prejudice to criminal or civil liability.
- b. **Demotion** shall include reduction in rank or salary, or both. Demotion shall be imposed **exclusively** in cases wherein the respondent had been adjudged guilty of:
 - 1) **Gross neglect of duty;**
 - 2) **Gross insubordination;**
 - 3) **Gross inefficiency; and**
 - 4) **Incompetence in the performance of official functions.**
- c. **Disciplinary suspension**, which is separate from and independent of, preventive suspension, shall result in the temporary cessation of work for a period not exceeding one (1) year.

Suspension of one (1) day or more shall be considered a gap in the continuity of service. During the period of suspension, respondent shall not be entitled to all money benefits, including leave credits.

- d. **Written reprimand** shall not carry with it any accessory penalty nor result in temporary cessation of work. In the event the penalty of reprimand was imposed on appeal as a result of modification of the penalty of suspension or dismissal from the service, the respondent shall be entitled to the payment of back salaries and other benefits which would have accrued during the period of his/her suspension or dismissal.
- e. **Verbal caution, written warning and restitution** shall not be considered as corrective actions. Accordingly, these shall not be recorded in the employee's 201 file.

- f. **Fine** shall be in an amount not exceeding six (6) months salary of the respondent. The computation thereof shall be based on the salary rate of the respondent when the decision becomes final and executory.

The implementing rules and regulations for the imposition of fine shall be drawn up.

ARTICLE 212. Administrative Disabilities Inherent in Certain Penalties. -

a. The penalty of **dismissal** shall carry with it that of cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking civil service examinations.

b. The penalty of **demotion** shall carry with it disqualification for promotion for one (1) year.

c. The penalty of **suspension** shall carry with it disqualification for promotion corresponding to the period of suspension.

d. The penalty of **fine** shall carry with it disqualification for promotion for the same period he / she was fined.

e. The accessory penalties inherent in the penalty of suspension shall continue to apply when the penalty of fine is imposed in lieu of suspension.

Should the respondent fail to pay in full the fine within the prescribed period, he/she shall be deemed to have failed to serve the penalty imposed, hence, the disqualification for promotion shall remain in effect until such time that the fine is fully paid.

f. The penalty of **reprimand** shall not carry with it any accessory penalties.

g. Neither **verbal caution** nor **written warning** shall be considered a penalty.

ARTICLE 213. Penalty of fine. - The following are the guidelines for the penalty of **fine**:

1. Upon the request of the head of office or the concerned party and when supported by justifiable reason/s, the disciplining authority may allow payment of fine in place of suspension if any of the following circumstances are present:

- a. When the functions/nature of the office is impressed with national interest such as those involved in the maintenance of peace and order, health and safety, education; or
- b. When the respondent is actually discharging frontline functions or those directly dealing with the public and the personnel complement of the office is insufficient to perform such function; and
- c. When the respondent committed the offense without utilizing or abusing the powers of his/her position or office.

2. The payment of the penalty of fine in lieu of suspension shall be available in Grave, Less Grave and Light Offenses where the penalty imposed is six (6) months or less at the ratio of one (1) day of suspension from the service to one (1) day fine; **Provided**, that in that in **Grave** Offenses where the penalty imposed is six (6) months and one (1) day suspension in view of the presence of mitigating circumstances, the conversion shall only apply to the suspension of six (6) months. Nonetheless, the remaining one (1) day suspension is deemed included therein.

3. The maximum period to pay the fine shall not exceed one (1) year from the time the decision / resolution becomes final and executory. The conversion of suspension into fine is final and executory and, therefore, not subject of appeal or any other similar relief.

4. The failure of the respondent to pay the fine or part thereof shall cause the reversion to the original penalty of suspension. As such, respondent shall serve the original penalty of suspension imposed, irrespective of the amount he/she has already paid.

5. Fine may be paid in equal monthly installments, subject to the following schedule of payments prescribed below:

- a) Fine equivalent to one (1) month salary shall be paid within two (2) months;
- b) Fine equivalent to two (2) months salary shall be paid within four (4) months;
- c) Fine equivalent to three (3) months salary shall be paid within six (6) months;
- d) Fine equivalent to four (4) months salary shall be paid within eight (8) months;
- e) Fine equivalent to five (5) months salary shall be paid within ten (10) months;
- f) Fine equivalent to six (6) months salary shall be paid within twelve (12) months;

6. The fine shall be paid to PAGCOR, computed on the basis of respondent's salary at the time the decision becomes final and executory.

ARTICLE 214. Rule on Restitution or Indemnification. - The following rules shall apply whenever the erring employee is required by Management to reconstitute Company property or monies lost or damaged by reason of his culpable negligence:

1. The basis of the restitution shall be the **book value** of the property.
2. The schedule of payments shall be set by the Branch Management Panel (BMP) of the branch concerned.
3. Should the erring employee give his informed consent to the foregoing schedule of payments, he shall execute an authorization to deduct installment payments from his salary.
4. The erring employee's aforesaid authorization shall be submitted to the S/BHRO who, in turn, shall forward the same to the Accounting Section.
5. In case the erring employee refuses to issue said authorization letter, the restitution shall be effected by the Branch Management Panel (BMP) thru deductions from monetary benefits not mandated by law.
6. The S/BHRO shall monitor the payments made by the erring employee until full payment of the amount or value of the property sought to be restituted.
7. Demotion and / or suspension shall not be resorted to as an alternative to restitution.

ARTICLE 215. Effect of Pendency of an Administrative Case. -

215.1 . Pendency of an administrative case shall not disqualify respondent for promotion or from claiming maternity / paternity benefits.

For this purpose, a pending administrative case shall be construed as follows:

- a) when the disciplining authority has issued a formal charge or a notice of charge/s to the respondent; or
- b) in case of a complaint filed by a private person, a *prima facie* case is found to exist by the disciplining authority.

215.2 An officer or employee with pending administrative case/s is not barred from enjoying leave privileges **except** vacation leave.

215.3 In case of compulsory retirement, the administrative case shall continue to be investigated for purposes of determining the employee's entitlement to retirement benefits.

215.4 No officer or employee under administrative investigation shall be allowed to resign pending decision of his case.

ARTICLE 216. *Effect of Exoneration on Certain Corrective Actions / Penalties.* -

216.1 Exoneration contemplates a finding of not guilty for the offense/s charged. It includes a declaration by the disciplining authority that the case against the respondent has been dismissed, or that the respondent has been absolved, exculpated or found innocent of the acts or omissions imputed against him.

Downgrading of the charge to a lesser offense shall not be considered "exoneration" within the contemplation of these rules.

216.2. In case there is **demotion**, the exonerated employee shall be restored to his former position without loss of seniority rights. Respondent shall also be entitled to the payment of salary differentials during the period the demotion was imposed.

216.3 In case the corrective action imposed is **suspension**, he/she shall immediately be reinstated to his/her former post without loss of seniority rights and with payment of back salaries and all benefits which would have accrued as if he/she has not been illegally suspended.

216.4 In case the penalty imposed is **dismissal**, he/she shall be immediately reinstated without loss of seniority rights with payment of back salaries and all benefits which would have accrued as if he/she has not been illegally dismissed.

216.5 In case the penalty imposed is a **fine**, the same shall be refunded.

216.6 The respondent who is exonerated by final judgment shall be entitled to the leave credits for the period he/she had been out of the service.

ARTICLE 217. *Whistleblower Protection Policy.* - PAGCOR upholds public accountability and respects that it has a responsibility for the stewardship of its assets and resources. The Company's system of internal controls and operating procedures are intended to detect and to prevent or deter unethical or illegal activities, including questionable accounting or auditing matters. Towards this end, PAGCOR has established this Whistleblower Protection Policy (the "Policy") to assist in the reporting of irregularities and corrupt practices.

It is the Company's policy to support and encourage its employees to report and disclose unethical or illegal activities, and to fully investigate such reports and disclosures. Further, it is PAGCOR's policy to protect, from any adverse employment action or discrimination of any kind, any employee who reports, discloses or investigates unethical or illegal conduct. For purposes of this Policy, "adverse employment action" includes action to discharge, demote, suspend, threaten, interfere, harass, coerce, retaliate or in any other manner discriminate against an employee.

This Policy does **not** apply to or change the Company's policies and procedures for individual employee grievances or complaints relating to job performance, terms and conditions of employment which will continue to be administered by the Human Resource and Development Department.

ARTICLE 218. *Entitlement to Payment of Back salaries and other Benefits of an Illegally Dismissed Employee.* - The following rules shall govern the payment of back salaries and

other benefits to an illegally dismissed employee who is completely exonerated or found innocent and later ordered reinstated:

218.1 An illegally dismissed employee who is later ordered reinstated is considered as not having left his/her office and shall be entitled to payment of back salaries and other benefits that should accrue to him/her by virtue of his/her office.

218.2 For purposes of Productivity Incentive Bonus (PIB), the performance rating of the employee prior to his/her illegal dismissal shall be the basis for the grant.

218.3 An illegally dismissed employee is entitled to full back salaries and other monetary benefits from the time of illegal dismissal up to the time of actual reinstatement.

218.4 An employee placed under preventive suspension *pending investigation* is not entitled to compensation.

218.5 Pardon does not entitle the public officer to back salaries, except when the pardon is expressly grounded on said officer's innocence.

218.6 A public officer who has been completely exonerated shall be awarded back salaries even though the appellate ruling exonerating him/her is silent on the matter of payment of back salaries.

ARTICLE 219. *Remand of Appealed Case to Agency of Origin.* –

219.1 Defect relative to the formal charge. - If on appeal, the Civil Service Commission (CSC) finds that the agency violated respondent-appellant's right to due process such as the failure to issue a formal charge, the Commission shall dismiss the appealed case and order the immediate reinstatement of the respondent with payment of back salaries and other benefits. However, the dismissal of the case shall be without prejudice on the part of the agency's disciplining authority to re-file it in accordance with law.

219.2 Defect relative to procedural due process. - If a formal charge has been issued but the disciplining authority has violated respondent-appellant's right to procedural due process, the Civil Service Commission shall remand the appealed case to the agency of origin for further proceedings to be conducted within **three (3) calendar months** from the date of receipt of the case records, unless there is delay due to the fault, negligence or petition of the respondent, or an extension is granted by the Commission on meritorious grounds. The period of delay shall be excluded in the computation of the prescribed period. Within fifteen (15) days from the termination of the proceedings, the disciplining authority shall render his/her decision.

If at the end of the three (3) month period, the disciplining authority failed to conduct further proceedings, the Civil Service Commission upon motion of the respondent-appellant shall vacate and set aside the appealed decision and declare the respondent-appellant exonerated of the charge/s. If the respondent-appellant is under preventive suspension, he/she shall be immediately reinstated and shall be entitled to back salaries and other benefits.

The Civil Service Commission shall evaluate requests for extension of the three (3) month period and may grant the same on meritorious grounds guided by the principles of justice and fair play. All requests for extension shall not be for more than twenty (20) days.

For this purpose, the CSC Regional Office Directors concerned shall monitor the implementation of the CSC Resolution remanding the case to the agency of origin and to submit a report to the Commission Proper.

218.3 Compliance with the Directive of the Civil Service Commission. - Upon the receipt of the resolution/order of the Civil Service Commission remanding the appealed case to the agency for reinvestigation and ordering the reinstatement of the respondent-appellant, the Corporate and Legal Services Department (CLSD) shall coordinate with the Human Resource and Development Department

(HRDD) to effectuate the immediate reinstatement of the respondent-appellant. Further, the HRDD shall endorse the matter to the Security Department for reinvestigation. Should there be *prima facie* evidence of guilt on the part of the respondent-appellant, he/she shall be formally charged, and the formal investigation shall be conducted in accordance with these Rules.

In cases wherein the Civil Service Commission noted a violation of the respondent-appellant's right to procedural due process, case shall be forwarded by the HRDD to the Hearing Officer of agency for a formal investigation.

ARTICLE 220. *Computation of period.* - In computing any period of time prescribed by these Rules, the first day shall be excluded and the last day included, unless it be a Saturday, a Sunday or a legal holiday or a special non-working day, in which case the period shall run until the end of the next working day which is neither a Saturday, a Sunday nor a legal holiday.

Copies of decisions and other communications shall be served on the counsel of record if one is represented by a counsel. If he/she has none, the same shall be served on the party concerned. The period to perfect a motion for reconsideration or an appeal shall be reckoned from the date of receipt of counsel or party, as the case may be.

ARTICLE 221. *Petition for Review of Decisions of Agencies.* - A decision of an agency head dismissing a complaint for lack of prima facie case or issuance of a formal charge for a lower offense is not subject to appeal or petition for review before the commission.

ARTICLE 222. *Contumacious / Contemptuous Acts Punishable.* - An official or employee or any person found guilty of, disobedience of or resistance to a lawful writ, process, order, decision, resolution, ruling, summons, subpoena, command or injunction of the Civil Service Commission (CSC) may be punished for indirect contempt pursuant to its Rules on Administrative Cases in the Civil Service.

TITLE IX

FINAL PROVISIONS

ARTICLE 223. *Application of these Rules.* - These Rules shall, as far as practicable, be applied conformably with Civil Service Commission (CSC) Resolution No. 1101502 dated November 18, 2011, otherwise known as the "*Revised Rules on Administrative Cases in the Civil Service*," CSC Resolution No. 01-0940 dated May 21, 2001, otherwise known as the "*Administrative Disciplinary Rules on Sexual Harassment Cases*," Republic Act No. 6713, otherwise known as the "*Code of Conduct and Ethical Standards for Public Officials and Employees*" and its Implementing Rules and Regulations.

ARTICLE 225. *Transitory Provision.* - These Rules shall be applied prospectively to complaints filed after the date of effectivity of these rules.

ARTICLE 226. *Separability Clause.* - Any provision under these Rules which has been declared invalid by competent authority shall not affect the enforceability of the other provisions.

ARTICLE 227. *Repealing Clause.* - Memorandum circulars, Company personnel policies, resolutions, rules or regulations inconsistent herewith are hereby repealed or modified accordingly.

Manila, Philippines, _____, 2012.

CRISTINO L. NAGUIAT, JR
Chairman and Chief Executive Officer

JORGE V. SARMIENTO
President and Chief Operating Officer

JOSE S. TANJUATCO
Member, Board of Directors

ENRIQUITO M. NUGUID
Member, Board of Directors

EUGENE D. MANALASTAS
Member, Board of Directors

Attested by: